Office Supreme Court, U. S.
FILED
SEP 4 1926
WM. R. STANSBURY
CLERK

Transcript of Record.

(IN TWO VOLUMES.)

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. ———

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Petitioner,

No. 617

vs.

ROSENBERG BROTHERS & COMPANY,
Respondent.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Petitioner,

No. 618

vs.

CALIFORNIA WINE ASSOCIATION,
Respondent.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Petitioner,

No. 619

vs.

S. L. JONES & COMPANY, a Corporation,
Respondent.

VOLUME II.
(Pages 421 to 871, Inclusive.)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

15543

Nos. 4748, 4749, 4750

United States

Circuit Court of Appeals

For the Ninth Circuit.

Apostles on Appeals.

(IN TWO VOLUMES)

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,
Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,
Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,
Appellee.

VOLUME II.

(Pages 421 to 837, Inclusive.)

Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

(Testimony of Alfred E. Wolff.)

Q. You spoke of contracts, of affreightment: I suppose that you mean by that your firm bookings for space, or did you mean your bills of lading?

A. Your firm bookings for space, your contract for the space before the goods are shipped.

Q. You said something about keeping in touch with people who were engaging space: How do you do that?

A. That is a matter that is done more or less daily by the different members of the firm and our staff; it is done by contact on 'Change; it is done in the mornings automatically by reference to "The Guide," which Mr. Graham showed me that comes in in the morning and it is studied by one of the clerks, and any variation in the announced itinerary of a vessel is called to our attention. There is no set routine. Sometimes it is by cable from the other side.

Q. You have a great many sources of information about these matters; sometimes you get it out of "The Guide," sometimes you will get it on 'Change: Is that right?

A. Yes; but the check-up in our office, at least, is usually done, no matter what casual information we get on the floor of the 'Change; it is done the first thing in the morning from "The Guide"; "The Guide" verifies it.

Q. If your contract of affreightment says one thing and "The Guide" says another, upon which do you rely?

(Testimony of Alfred E. Wolff.)

A. Then we go to the steamship company and find out why. That does not happen, though.

Q. You would not rely on "The Guide," but you would rely on the contract of affreightment in that instance, wouldn't you? [332]

A. Oh, of course; but sometimes mistakes happen, even in contracts.

Q. And, of course, it is a fact that ships are frequently advertised in "The Guide" for certain ports, and for various reasons afterwards withdrawn from that trade?

A. Yes; they may be advertised for four ports, and one is withdrawn for lack of cargo.

Q. Or, if there is something the matter with the ship, or for various other reasons: Is that right?

A. Yes, quite right.

Q. Do you sometimes have occasion to make claims against vessels because of damaged cargo?

A. Yes, sir.

Q. When you do that you look for your rights under your bill of lading, do you not?

A. Sometimes we succeed in collecting where we have no legal right under the bill of lading—as matter of goodwill.

Q. But when you look to see whether you have a right to collect a cargo damage claim you look at your bill of lading to see what is there provided, do you not? A. Yes.

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—Q. In speaking about the cus-

(Testimony of Alfred E. Wolff.)

tomary interpretation of this deviation clause in the Shipping Board bill of lading which I have shown you, do I understand that you are familiar with the interpretation in San Francisco and other ports of the world, or is your familiarity with the customary interpretation solely in San Francisco, as interpreted around here?

A. In doing business with other ports of the world, questions naturally arise under bills of lading, and I think I know what our correspondents in other parts of the world—what attitude they take toward documents.

Q. Now, as to the sale of goods, or the sale of bills of lading—there is practically no distinction after the goods are shipped, [333] being an importer, how do you fix the route of a vessel? Suppose you would buy a bill of lading after goods are shipped to you, what is the procedure then about the shipment?

A. That is fixed up at the time the goods are bought, which is long before the time you see the bill of sale. If you have any restriction as to the method of delivery, you impose that on the seller of the goods. Otherwise, all he has to do is to make the shipment on time and to the port you want. The exact route otherwise does not matter. It depends on the commodity, and on the market, and sometimes it depends on the time of the year.

Q. If the shipper does not impose on the ship a duty to make a particular route, what is your idea of the customary right of the ship to make routes?

(Testimony of Alfred E. Wolff.)

A. The customary right is substantially as expressed in that bill of lading. The ship advertises a service, but reserves the right to vary from that service as business may require. It is almost an impossible thing to hold a ship that is carrying cargo for a great number of consignees to an absolutely ironclad route; some shipper might fall down and not supply his cargo, and they cannot get more to fill her up for a given port, or they may get too much for that port and cannot discharge it all, having regard for the safety of the ship; in other words, they might have to go to that port last, because the biggest bulk of the cargo is for that port. There are so many things that come up in freight ships; in passenger ships, of course, it is somewhat different.

Q. You say that in freight ships it is almost impossible to hold the ship down to a fixed geographical order; do you mean that it is impossible, or that the shipper would have no such intention to hold the ship down?

A. Both, I should say. The [334] shipper has no intention, because in most cases it makes no difference to the shipper; you don't buy your goods to be used on the day they get here, because you cannot figure to the dot on the day they will get here; an importer carries stock enough to carry him along so that if his goods are two or three weeks late he won't run short. Once in a while he may miscalculate.

(Testimony of Alfred E. Wolff.)

Q. Suppose it did make a difference to the shipper, what would he do then?

A. Frequently, for instance with goods that we bring in from China to catch the holiday trade, goods which we cannot buy until October, when the season opens, we figure in bringing those in on a fast mail steamer, in order to get them here in time for the trade. We impose that condition. Otherwise, they might be shipped on a freight boat that would go to various China ports and perhaps go down to Manila and at Honolulu, and take 60 days to get here, instead of coming, say, in 25 days by a direct boat.

Q. And it is customary, is it, to take that roundabout routeing in the Oriental trade, unless provided against? A. Yes.

Q. This bill of lading says San Francisco as the port of shipment, and Cardiff, Wales, as the point of destination; is it customary to say anything more in a bill of lading to make an advertised route, or isn't it customary? A. It is not customary.

Q. Would you say that with those two ports named, that the ship could or could not go in the route which she was advertised to go?

A. Commercially, she could.

Q. You spoke about your contract of affreightment, your contract for space, and your bill of lading; there is a differentiation, isn't there, between those?

A. When the goods are shipped the bill of lading takes the place of the contract of affreightment. If

(Testimony of Alfred E. Wolff.)

there is anything vital in the contract of affreightment that overrides the clause in the bill of lading, we endorse it on [335] the bill of lading. If I put in my contract of affreightment "Shipment by direct steamer," and later they are shipped on a steamer scheduled to go direct, we put that in the bill of lading specifically.

Q. After your contract of affreightment is made up, naming two ports, that is, the port of shipment and the port of destination, what is your idea as to the right of the ship to advertise to make ports in other than their geographical order, as in this particular case here.

A. If I have not held the ship by any special contract clause to a direct voyage between those two ports, she has the usual commercial right to take cargo for ports in that general direction. I would not say she had the right to go to Kobe, first, although it is done in some lines. Take the Robert Dollar Line, for instance—

The COURT.—Has not the witness covered this ground in his direct examination?

Mr. GRAHAM.—I think so, your Honor.

The COURT.—I think so, too.

Mr. GRAHAM.—That is all.

Recross-examination.

Mr. MANNON.—Q. This ship was destined from San Francisco to Cardiff; that was the first port in geographical order; according to the custom that you have testified to, would she be entitled to go into

(Testimony of Alfred E. Wolff.)

Baltic Sea ports, or any of them, before going to Cardiff?

A. There would be nothing in the custom against it; from a commercial man's viewpoint, that would not be a serious deviation.

Q. Could she also go to any of the Mediterranean ports before going to Cardiff?

A. The average steamer has not done so, although I knew one line before the war that did make Mediterranean ports first. [336]

Q. So you would think it was a proper thing, under this custom you are speaking of, for a shipment destined to Cardiff to make Mediterranean or Baltic ports?

A. I don't think it would be considered improper from the shipper's viewpoint.

TESTIMONY OF ERIK KRAG, FOR RESPONDENT.

ERIK KRAG, called for respondent, sworn.

Mr. GRAHAM.—Q. With whom are you now associated, Mr. Krag?

A. The General Steamship Corporation.

Q. What business does the General Steamship Corporation handle?

A. Steamship agents and operators.

Q. What is your specific position in the General Steamship Corporation?

A. Traffic Manager, European Services.

Q. What line does the General Steamship Corporation handle in that European Service?

(Testimony of Erik Krag.)

A. The French Line.

Q. How long has that line been operating out of San Francisco? A. Since 1921.

Q. How long have you been with the General Steamship Corporation in that capacity?

A. Since 1922.

Q. Before that, who were you with?

A. The General Commercial Company.

Q. What is their business?

A. Export and import.

Q. How long were you with them before 1922?

A. Two years.

Q. That is, from about 1920?

A. From 1918 to 1920.

Q. From 1918 to 1920 you were with the General Commercial Company? A. Yes.

Q. Were you or were you not interested in the European Pacific trade then, did you do any business with Europe, or didn't you?

A. We did business with Europe.

Q. What was it, export or import?

A. Both export and import — mostly export. [337]

Q. Mostly export from here to Europe?

A. From here to Europe; yes.

Q. Briefly, what ports were you dealing with at that time?

A. We were dealing with Scandinavian and continental ports.

Q. Did you do any business with England, or didn't you? A. I couldn't say for sure.

(Testimony of Erik Krag.)

Q. Did you have any experience with Shipping Board vessels, or not?

A. With Shipping Board vessels?

Q. Yes, did you make any of your shipments on Shipping Board vessels, or didn't you, at that time?

A. I think we did.

Q. You think you did, but you don't remember?

A. No.

Q. I show you a copy of the advertisement of the steamship "West Aleta" sailing from San Francisco January 6, 1920; you will note that it is scheduled Hamburg, Rotterdam, Cardiff, in that order; I also show you a copy of a bill of lading, which was the ordinary Pacific form bill of lading of the Shipping Board Emergency Fleet Corporation, in which the following deviation clause appears: "And to touch at any port or ports in any rotation or order, in or out of the customary route, and to call at such port or ports more than once." What is your interpretation of that clause in relation to the voyage described in that advertisement?

Mr. MANNON.—I take it, your Honor, that it is not necessary for me to renew my objection? In other words, our objection runs to this line of testimony.

The COURT.—There is no objection reserved to testimony which might be called out in response to that particular question. In other words, his interpretation of that clause is incompetent testimony. His interpretation is not what we want.

(Testimony of Erik Krag.)

He is called to testify to the customary interpretation amongst shipping people. [338]

Mr. MANNON.—We have understood, may it please the Court, that we had an objection here to all of the testimony that went in any way to vary the bill of lading, or to establish a custom contrary to it.

The COURT.—What the practical construction of this clause has been by shippers, by steamship people, is, I think, admissible. I have also admitted, subject to your objection, testimony as to what the custom is. What this witness' or any other witness' interpretation is of a provision of the contract is clearly inadmissible.

Mr. MANNON.—I have not been making an objection to any of these matters, because I understood I was covered, and I did not want to keep interrupting by making objections.

Mr. GRAHAM.—I see your Honor's point, and I will amend the question.

Q. From your position in the French Line, and your experience in the trade, what would you say would be the customary interpretation of that clause in relation to that voyage?

A. I would interpret it the way it reads, to touch at any port or ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once. This would mean that if a vessel for some reason or other changed her route, she would have permission to do so according to the bill of lading.

(Testimony of Erik Krag.)

Q. Could you or could you not say that the vessel in this particular case had a customary right to go to Hamburg and then come down to Rotterdam, and then to Cardiff, or that she would not have that right?

A. The vessel is advertised in "The Guide," and particularly mentioned for Hamburg, Rotterdam and Cardiff. On this basis, I would say that she would be expected to call at Hamburg first, at Rotterdam next, and at Cardiff as the last [339] port.

Q. Under that deviation clause, what would be the customary interpretation of the scope of the right of the ship to deviate, how far could they go off the geographical order?

A. I would say anywhere within reason, within the range of the service in which the vessel was plying.

Q. That is, if the vessel were in the European service and were making certain ports, she could or could not go within those ports: Is that it?

A. She could go within those ports, as she would like.

Q. What is the general understanding in the trade as to European service, what does that mean, what range does that cover?

A. The range of the service, continental and United Kingdom, east coast ports.

Q. How far north and how far south on the continent?

A. On the continent the range is Bordeaux, Hamburg.

(Testimony of Erik Krag.)

Cross-examination.

Mr. MANNON.—Q. Wouldn't you consider that Copenhagen was European service?

A. Copenhagen is included in the itinerary of the Scandinavian Lines, but not of the regular lines calling at U. K. and continental ports.

Q. But you were asked about European service. Copenhagen includes European service, doesn't it?

A. No. When I think of European service I only think of continental and United Kingdom. Scandinavian service is always considered by the lines that operate in that service as a separate range.

Q. The "West Aleta" gets the right to go to the ports Hamburg, Rotterdam and Cardiff on account of that deviation clause, or on account of the advertisement—which? Your attention was called to the deviation clause in the Shipping Board bill of [340] lading.

A. The clause in the bill of lading should be the governing factor.

Q. And the advertisement has nothing to do with it, has it?

A. The advertisement indicates at the time that the intended route of the vessel is Hamburg, Rotterdam, Cardiff, if that is the order that the advertisement was listed in.

Q. But if there were not any advertising at all, there still would be a contract between the shipper and the ship owner, wouldn't there, by the bill of lading?

A. I have always considered that the bill of lading is the contract binding the two parties.

(Testimony of Erik Krag.)

Q. And when you want to find out what the ship can or cannot do about the cargo, or what the rights of the cargo owner are, you look at the bill of lading, don't you?

A. Yes, of course, before making my arrangements for the cargo, I would see where she was going.

Q. And there would be a bill of lading contract whether there was any advertisement, or not, wouldn't there?

A. If there were no advertisement, there must have been some negotiations before the issuance of the bill of lading between the shipper and the vessel.

Q. So that the advertising just takes the place of those negotiations, in your mind, or of some information obtained in some of the earlier negotiations?

A. I should say it would supplement the negotiations.

Q. Be a part of the negotiations and supplement them in some way? A. Yes.

Q. Of course, there are ships that sail without advertising at all, aren't there?

A. Very few, I should say.

Q. There are some out of this port, though, that sail without advertising, aren't there?

A. None of the lines that I know. [341]

(Testimony of Erik Krag.)

Q. In other words, they have to advertise in order to get some cargo?

A. Yes, I should say that that is the custom of any line of any importance, to advertise.

Q. That is why they advertise?

A. Yes, to assist in their business.

Q. Bills of lading are considered, so far as you know, in San Francisco, just like they are in the other ports of the world, are they not?

A. A bill of lading is considered a contract between the ship and the shipper.

Q. And bills of lading having the particular deviation clause in them that Mr. Graham read to you from the Shipping Board form are in use and have been in use all of the time you have known anything about the business?

A. Ocean bills of lading have been in use, so far as I know, as long as I have been in the shipping business.

Q. And they always have deviation clauses in them, too, don't they?

A. To properly protect the ship owner, they should have.

Q. And you have never seen a bill of lading without a deviation clause of some kind in it, have you?

A. No, not to my recollection.

Q. As we have seen here by looking at a great many of these bills of lading, apart from that deviation clause there are a great many other clauses in the bills of lading, are there not, that you are conversant with? A. Yes.

(Testimony of Erik Krag.)

Q. And when you want to find out anything about the rights of the cargo owner, or the ship owner, you look at the bill of lading, do you not?

A. Yes.

Q. And if you have any doubt about what the bill of lading means, you send it to your lawyers, don't you? A. Yes.

Q. And the bills of lading, of course, and the various clauses in the bills of lading you, yourself, know have fixed interpretation [342] by the courts very often, don't you?

A. I presume so.

Q. You know it, don't you?

A. I know that the courts establish certain cases and that certain decisions have been given.

Q. And you do your business with reference to those decisions, don't you?

A. Whenever an important decision on a bill of lading is given, we always follow the case with interest.

Q. And there are publications that you and other shipping concerns take to keep you posted on what the decisions are; isn't that so?

A. Generally speaking, I would say yes.

Q. Of course, you don't know every decision, do you? A. No.

Q. But you keep advised of the Court's decisions from time to time, do you not, and in addition to that you take the advice of your counsel about your bills of lading, don't you? A. Yes.

Q. You said, as I remember it, that under the

(Testimony of Erik Krag.)

deviation clause Mr. Graham read to you from the Shipping Board bill of lading, a vessel could change her route; could she change her route after she sailed from San Francisco? A. Yes.

Q. That is, if she wanted to go in some different route other than advertised, she could go on that different route if she had that clause in the bill of lading? A. Yes.

Q. So she would not be bound by the advertised route, if she had that clause in the bill of lading. That is what I am getting at.

A. If nothing particularly happened between the time she loaded at San Francisco and the time she got to the other side for discharging her cargo, it would be my understanding that on the basis of the ad she would be proceeding to Hamburg, and then to Rotterdam, and Cardiff would be her last port.

Q. But suppose she went out of San Francisco and at San Pedro picked up some cargo she had not expected, and that cargo was to go to some intermediate port between San Pedro and Hamburg, you would expect she could stop at that port, would you? A. Yes. [343]

Q. It would not make any difference whether she had advertised in regard to stopping there, or not?

A. No.

Q. You look at your bill of lading, your contract of carriage, to find out whether she could stop there?

A. Yes.

Q. And the part you would look at in this in-

(Testimony of Erik Krag.)

stance would be the deviation clause; that is right, isn't it? A. Yes, sir.

Q. Mr. Chichester is manager of the General Steamship Corporation, is he not?

A. He is vice-president.

Q. What is your position there?

A. I am manager of European service.

Q. How does your deviation clause read in your bill of lading?

A. I cannot give you the reading of it offhand, but we have a deviation clause there.

Q. But you don't know how it reads?

A. If I can refer to the bill of lading I might be able to tell you.

Q. Have you one in your pocket? A. Yes.

Q. I would like to see your deviation clause. I wonder if we can have that one put in evidence?

A. Would you like to see a copy of our bill of lading?

Q. Yes, thank you. The witness produces this form of bill of lading that is in use by the French Line. I will read the deviation clause:

"RECEIVED in apparent good order and condition from —— at the port of —— to be transported by the steamship —— with liberty to substitute (or tranship goods by) any other or succeeding steamer also with liberty either before or after proceeding towards the port of discharge to proceed to, and/or stay at, any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route of said port of discharge) once or oftener, in

(Testimony of Erik Krag.)

any order, backwards or forwards, for the purpose of drydocking (even with cargo on board), [344] or loading or discharging cargo or passengers, or for any purpose whatsoever." . . . .

In connection with the witness' testimony I offer in evidence this copy of the bill of lading.

(The document was marked Libelant's Exhibit 17.)

Q. Who drew that clause, do you know?

A. The French Line.

Q. And your bill of lading is used out of San Francisco for your ports of destination, and from European ports to San Francisco, is it not?

A. This bill of lading is used between this coast and Europe.

Q. Running both ways? A. No.

Q. Only outbound?

A. Only from this coast to Europe. There is a particular bill of lading, which happens to be in French, between Europe and this coast.

Q. It is written in French?

A. Yes. It is a different form than this.

Q. Do you know if there is a translation?

A. I know there is a translation.

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—Q. How many ships has the French Line operating? In other words, is it quite an extensive service, or has it just a couple of ships?

A. It is considered the largest service out of San Francisco to European ports.

(Testimony of Erik Krag.)

Q. How often do you have sailings?

A. Twice a month, or oftener.

Q. Mr. Mannon has talked about the relationship of this bill of lading with the advertisement which we have spoken about; would you or would you not consider that once this advertisement is in "The Guide," as you have seen it, it became a part of the contract, or could you take the bill of lading on its face as [345] it is?

The COURT.—I will sustain an objection to that question.

Mr. GRAHAM.—Q. Your attention has been called to the two different clauses in the bills of lading, one reading, in the Shipping Board bill of lading, and one reading as you have indicated in your own French Line bill of lading; can you or can you not give me the customary distinction, or is there any distinction in customary usage between those two clauses? Would the ship have the same right, or wouldn't it have the same right?

A. I don't see much difference in those two clauses; from my recollection of those clauses, I don't see that there is much difference between the two.

Q. You will note that there is a difference, the difference being that the words "or beyond" are added in your French Line bill of lading, and that they are not in the other bill of lading.

A. Yes, I notice that.

Q. Would it be customary to draw any distinction between those two clauses, as to the right of the

(Testimony of Erik Krag.)

ship to make this voyage which the "West Aleta" made? A. I would not say so.

Q. You would not say so? A. No.

Q. Do you know that the words "or beyond" appearing in that French Line bill of lading, do you know when they were put in; in other words, has it been recently, or have they been in there all the time?

A. I think it is about four months since that was put in there.

Q. You don't know for what purpose it was put in, do you?

A. No; it was by orders of the French line.

Recross-examination.

Mr. MANNON.—Q. Under your form of bill of lading, do you think your vessel has the right to pass a port with cargo and then come back to that port with the cargo? A. Yes. [346]

Q. Is that on account of the use of the words "or beyond" in your bill of lading? A. No.

Q. Is that what "or beyond" refers to?

A. No. I should imagine that "or beyond" would refer to a wider range of ports, say that we were going out of the usual range.

Q. So that if your ships, for instance, go to European ports, you would think that without the words "or beyond" in there your vessels could pass a port and come back to the port if it is within what you call the customary range? A. Yes.

Q. And then when you put in the words "or be-

(Testimony of Erik Krag.)

yond," that adds something beyond that that can be done by the ship? A. Yes.

Q. How far, under that form of bill of lading that you use, do you think you could go because of the words "or beyond"?

A. I would say, for instance, to Spanish ports. The reason for putting in the words "or beyond" was because we had certain cargo offerings for Spanish ports, which are south of the Hamburg-Bordeaux range. In order to show the shipper that we might go beyond that range, we found it proper to cover it in the bill of lading.

Q. So there is a definite distinction between bills of lading with the words "or beyond" in them and those that do not have those words in them?

A. I would not say that.

Q. Then you think it didn't make any difference, and that your ships could go to Spanish ports, without those words in there?

A. I think they did.

Q. You think they did? A. Yes, sir.

Q. But that was the reason for putting those words in there, "or beyond"? A. Yes.

Mr. GRAHAM.—Q. Have you ever had any dealings in the trans-Pacific trade? A. Yes.

Q. Do you know anything about Kobe, or Yokohama, or Hongkong, [347] what has been your experience as to ships calling in geographical order there? Would they call in or out of the geographical order?

A. It is about ten years since I was in that service, and so I cannot say definitely.

TESTIMONY OF E. B. WOLFF, FOR RESPONDENT.

E. B. WOLFF, called for respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated? A. I am in business for myself now.

Q. Who were you associated with in 1919 and 1920? A. Buck-Van Sicklen & Co., Inc.

Q. What was the nature of the business carried on by Buck-Van Slicken & Co.?

A. Importers and exporters.

Q. Where did you do most of your business, was it world-wide? A. World-wide.

Q. Did you or did you not do any European business at that time?

A. Very largely a European business.

Q. That was in 1919 and 1920? A. Yes.

Q. Were you or were you not shipping on Shipping Board vessels? A. We were.

Q. What were you shipping generally?

A. Flour and rice were the heaviest; also dried fruits and general merchandise. I would not know all the particulars, except outside of flour and rice, I know those things, because they were the heaviest; the general lines I did not know.

Q. What particular ports—continental?

A. Continental.

Q. Did you do any shipping to the U. K.?

A. Occasionally to London and Liverpool.

Q. I show you here a bill of lading which is in evidence in this case, it is the usual Shipping Board

(Testimony of E. B. Wolff.)

form bill of lading used in 1920 on ships from San Francisco. The steamship "West Aleta," [348] as you will note, sailed from San Francisco, and you will note that it says here, "From San Francisco to Cardiff, Wales." I will read you the usual deviation clause which appeared in this particular instance: "To touch at any port or ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff." I would like very much to have you tell the Court the customary interpretation of that clause in relation to the voyage which is advertised in "The Guide," here, of the steamship "West Aleta," from which you will note that it is advertised to Hamburg, Rotterdam and Cardiff, in that order.

Mr. MANNON.—I think first the witness should be asked to testify whether there was any customary interpretation of that clause.

Mr. GRAHAM.—Q. Do you know whether there was any customary interpretation in the shipping field of such a deviation clause?

A. I don't just understand what you mean.

Q. You are familiar with this bill of lading, aren't you?

A. Yes, I am familiar with it.

Q. In using this bill of lading, did you take occasion to read it? You know what is in it, don't you?

A. Yes. With reference to where I am shipping to, if that is what you mean?

(Testimony of E. B. Wolff.)

Q. Can you say whether there was any customary interpretation of this deviation clause, or not? A. In what way do you mean?

Q. How did the shipping world consider this clause?

The COURT.—He means with reference to deviation.

A. I don't consider it a deviation if they made their ports.

Mr. GRAHAM.—Q. What is their interpretation of that clause, how do they consider it?

A. That they have a right to go there, so long as they make the ports advertised they have a right to take them as they like. [349]

Q. Do I understand you to say that under that clause and that advertisement, the steamship "West Aleta" had the right to make that voyage in that order?

A. I would say they had the right to make it as the operators wanted to make it, so long as they made reasonable delivery of the cargo to the purchasers on the other side.

Q. I show you a copy of the manifest of the steamship "West Aleta" on that voyage, from which you will note that the firm of Beck, Van Sicklen & Co. shipped on the steamship "West Aleta" for Hamburg 1480 bags of rice; are you familiar with that shipment?

A. It would have passed through my hands simply as having been accepted or declined when the

(Testimony of E. B. Wolff.)

transaction was made; outside of that I would have nothing further to do with it.

Q. Did you or did you not actually ship on this Shipping Board bill of lading on the steamship "West Aleta" at that time? A. Undoubtedly.

Q. As to the routing of these vessels, I understand you said that you considered the ship could go on that particular route under those circumstances? A. Yes, sir.

Mr. MANNON.—I object to that as leading.

Mr. GRAHAM.—Well, he has already testified to that.

Mr. MANNON.—If he has, the question is not necessary.

Mr. GRAHAM.—That is all.

Cross-examination.

Mr. MANNON.—Q. Mr. Wolff, do you mean that the ship would have the right to go to those ports, Hamburg, Rotterdam and Cardiff in that order because of the clause in the bill of lading Mr. Graham just showed you?

A. I consider that the operators of a vessel have the right, unless they make a specific arrangement for direct shipment to a port, to call at their ports as they put it down in their advertisement, and to the best advantage [350] of the operators.

Q. That doesn't have anything to do with the deviation clauses that he showed you in the bill of lading, does it?

A. I don't consider that the deviation clause, so

(Testimony of E. B. Wolff.)

far as I am personally concerned, would cut any figure. When I know that a steamer is going to certain ports, unless I make special arrangements with the operators of that steamer, I expect her to go to ports as it suits them.

Q. And if there were not any deviation clause at all in the bill of lading, and they advertised the ship in that order, you think they had the right to go in that order, do you?

A. No, not in that order, but as they wished to. It doesn't follow that because they advertise Hamburg, Rotterdam and Amsterdam, that they have to go in that particular order, Hamburg, Rotterdam, Amsterdam. Unless you contract to make a special delivery, a direct delivery, then can go as they wish.

Q. Unless there is a special agreement with the ship to go to Hamburg first, and there is not any deviation clause at all in the bill of lading—

A. Then they have the right to go to the ports that they tell their shippers they are going to, and as it suits the operators of the vessel.

Q. Not because there is any deviation clause in the bill of lading, though?

A. I have never studied the deviation clause, but I consider that when an operator of the vessel says, "I am going to Liverpool, London, Antwerp, and there is no special arrangement made, she can go as she sees fit, that is, as the operator sees fit.

(Testimony of E. B. Wolff.)

Q. That is not because of what it says in the bill of lading at all?

A. That I cannot say. That may be or may not be. I am telling you what I personally consider myself. If I go to a [351] steamship company and I want freight delivered at a certain port and that vessel is on the berth for certain ports and I don't specify she has to go to the port I want to ship to direct, they have the right to go to the ports as they see fit.

Q. By "being on the berth," you mean advertised, don't you? A. Exactly.

Q. So if they advertise a ship for Hamburg first, for Rotterdam second, and for Cardiff third—

A. They don't say Hamburg first, they don't tell you that. They simply say they are going to make those ports; they say they have this vessel for those ports.

Q. They don't tell you what port she is going to first?

A. Not unless you make specific inquiry. *They* it is up to you. If they say, "You can't go to Hamburg direct," then you have to look for a vessel that goes to Hamburg first.

Q. But if they say Hamburg, Rotterdam, Cardiff.

A. It doesn't mean they are going in that rotation.

Q. It might mean they were going to Cardiff first?

A. It might mean they were going to any of

(Testimony of E. B. Wolff.)

them first, so long as they deliver their cargo within reasonable time they are within their rights. I have myself considered it so and never took any exception to it.

Q. And that has nothing to do with what is in the bill of lading at all?

A. That I couldn't tell you. I conduct my own business in my own way. There are so many technicalities that they put in the bills of lading that I conduct my own business to suit myself.

Q. You don't pay any attention to the deviation clause in the bill of lading, do you?

A. No, I don't.

Q. And the same way about an advertisement?

A. I never would rely on an advertisement to do my business. I consider it absolutely worthless. Anybody who would make a contract on an advertisement [352] in "The Guide" or any other newspaper, and without going to the operators, he would go broke.

Q. You would think he would have to go to the operators of the boat to find out where she is going?

A. Absolutely. I don't care where she is going. If I want cargo for a certain port I only want to know if she is going there, and within what reasonable time she will get there; outside of that I have nothing to do with it.

Q. And you are perfectly clear that in making space arrangements, people do not rely on the newspaper advertisements?

(Testimony of E. B. Wolff.)

A. Except to see that there is a steamer going to sail; for further particulars they go to the operator of the vessel.

Q. And the advertisement has nothing to do with the ports of call? A. I should not say so.

Q. And without any deviation clause at all in the bill of lading a ship can go to any port the operators want to send her to?

A. I should imagine so.

Q. You are perfectly clear on that, aren't you?

A. I am clear on it from my own standpoint.

Mr. GRAHAM.—Q. On this bill of lading you will note San Francisco to Cardiff; what would be the customary meaning of that, that she would have to go to Cardiff first, or that she would not?

Mr. MANNON.—This witness has been asked and answered those questions on direct examination and on cross-examination, and I don't think should be allowed to go over the matter again.

The COURT.—I think that is correct.

Mr. GRAHAM.—That is all.

(An adjournment was here taken until Friday, January 2, 1925, at ten o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [353]

Friday, January 2, 1925.

TESTIMONY OF W. J. LANE, FOR RESPONDENT.

W. J. LANE, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Lane? A. Guggenhime & Co.

(Testimony of W. J. Lane.)

Q. And with whom were you associated in 1919 and 1920? A. The same firm.

Q. What is your position in that firm?

A. Traffic manager.

Q. How long have you been with them?

A. Since 1918.

Q. In what general field of operations are Guggenhime & Co. trading?

A. They handle business to all parts of the world.

Q. Do they or do they not engage in the European trade? A. They do.

Q. Did they or did they not in 1919 and 1920?

A. Yes, sir, they did.

Q. I show you a manifest of the steamship "Effingham," and ask you if your firm made these shipments to the port of Liverpool, as indicated here? A. Yes.

Q. I show you a copy of an advertisement which appeared in "The Guide," marked Exhibit "E" in the stipulation of facts in this case, and ask you to read the schedule of the steamship "Effingham" as there advertised.

A. Steamship "Effingham," sails December 8, for Hamburg, London and Liverpool.

Q. Is that in or out of geographical order?

A. You mean in the rotation of ports of call?

Q. Yes.

A. It would be out of geographical order.

Q. Now, the same thing as to the steamship "West Aleta."

(Testimony of W. J. Lane.)

A. "West Aleta," sails late December, for Hamburg, Rotterdam, Cardiff.

Q. Is that in or out of geographical order?

A. That is out of [354] geographical order, but not the geographical order—

Q. It is out of the geographical order of ports of call as shown on the map, isn't it? A. Yes.

Q. I show you a copy of the Shipping Board bill of lading, Pacific form, with which we are now concerned in this case, and ask you if you are familiar with that form.

A. Yes, that is the same form that we have been using in our shipments at that time.

Q. Did you or did you not use that form in your shipments on the "Effingham"? A. Yes, we did.

Q. I will read to you this deviation clause which is under construction in this court, and ask you what is the customary interpretation from the point of view of a shipper actually using this bill of lading, engaged in that trade at that time: "To touch at any port or ports in any rotation or order, in or out of the geographical order, and to call at any port or ports more than once," bearing in mind the advertisement, what is the customary interpretation of that?

A. The customary interpretation of a shipper in our position is that we did not hold or did not expect the steamship company to make the ports of call as they might have stated or might have expected to; conditions might have arisen that warranted them changing that order of ports of

(Testimony of W. J. Lane.)

call, and, naturally, we did not expect them to hold to that at any particular time; the bill of lading had such latitude as would give them permission to change.

Q. In relation to this advertisement I have shown you, reading Hamburg, Rotterdam, Cardiff, would you or would you not have considered it customary for vessels to have made those ports in that order, under that clause?

A. The vessel would be expected to make the ports of call under the condition of the shipping news there, but if they deviated from that for any [355] reason of their own we felt that we would have no claim, or have any complaint against them.

Q. In other words, would you or would you not consider that the vessel was making a wrongful deviation if it went to these ports as I have read them to you?

Mr. MANNON.—We submit that this gentleman's interpretation cannot be binding here.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Would you consider that a customary right, from the point of view of the shipping public, would entitle the vessel to make these ports in this order: Hamburg, Rotterdam and Cardiff, under that clause? A. Yes.

Q. At that time did you subscribe to any shipping papers in San Francisco?

A. We have always subscribed to the Shipping News and the Shipping Register.

(Testimony of W. J. Lane.)

Q. By the "Shipping News," just what do you mean?

A. The "Daily Commercial News" and the Shipping Register."

Q. I show you a copy of "The Guide," and ask you did you or did you not subscribe to that paper at that time?

A. Yes; I refer to "The Guide" as the "Shipping Register."

Q. Then I am correct in understanding, am I, that by the "Shipping Register" you mean you subscribed to "The Guide"?

A. Yes, we subscribed to "The Guide."

Q. In finding out the route that a vessel would take, from the point of view of a shipper do you know what is customarily done where only the point of shipment and the port of destination are named in the bill of lading?

A. We referred to "The Guide" for that information.

Cross-examination.

Mr. MANNON.—Q. Mr. Graham read to you this deviation clause [356] which says to touch at any port or ports in any rotation or order, in or out of the customary route, and call at any port or ports more than once; that particular clause has been in very many bills of lading which you have handled, has it not? A. Yes.

Q. And it was in use in 1918, was it not?

A. Yes, sir.

(Testimony of W. J. Lane.)

Q. That particular clause is in use in bills of lading now, is it not?

A. That clause, or one to the same effect.

Q. That clause reads, "To touch at any port or ports"; what is the customary meaning of that, if any?

A. Our interpretation of that clause is that a vessel in a certain trade route, with a certain radius of ports to call at, that they didn't necessarily have to serve those ports in any rotation, but they could call at any port that they felt, any port that they saw fit to, in any order that they saw fit to.

Q. What is the meaning of this language, according to the custom that you are testifying about, "in or out of the customary route."

A. We take it that if there is a change in the same trade route that this vessel is operating in, they would have the same privilege of deviating out of that same trade route.

Q. So that your thought that the words, "to touch at any port or ports in any rotation or order," confined them in some way to the same customary route? A. Yes.

Q. And that these words, "in or out of the customary route," permitted them to touch at ports outside the customary route? A. Yes, sir.

Q. So that under this clause, the vessel is not really limited to any particular ports or trade routes? A. No.

Q. She could go to whatever ports, substantially,

(Testimony of W. J. Lane.)

she wanted to, if she had that clause in the bill of lading? A. Yes, sir.

Q. And substantially, if she had goods on board, she could take [357] the goods, then, whenever she wanted to, provided she had that clause in the bill of lading? A. Yes, sir.

Q. You were asked some questions about advertising, and I think you said that you had some goods on the "Effingham." A. Yes, sir.

Q. Mr. Graham showed you an advertisement from "The Guide"; I want to show you the one from the "Daily Commercial News"; this advertisement from the "Daily Commercial News," which is in as an exhibit to an agreed statement of facts here, says, "Steamship 'Effingham' for London, Liverpool and Hamburg sails December 6." What does that mean, under any custom you know of in advertising?

A. It usually indicates the rotation in which they expect to have the vessel call at those ports named.

Q. That is, if you see an advertisement like that in the "Daily Commercial News," you would expect that the vessel would go to London, Liverpool and Hamburg in that order?

A. In that order, yes.

Q. But suppose that after the vessel sailed from the port of San Francisco, say, and she had an advertisement outstanding like this, and she had a bill of lading with a clause in it like the one I read to you, and she got some cargo on the way over, say at San Pedro or somewhere else, for some other

455

(Testimony of W. J. Lane.)

port, maybe a port like Danzig, could she go there, do you think, customarily?

A. Limited to that clause in the bill of lading she would have that privilege.

Q. It is the clause in the bill of lading that gives her the privilege, is it? A. Yes, sir.

Q. So that you really don't depend on the advertisement to know where the vessel is going with regard to the ports of call, because after she leaves San Francisco, and after the advertisements are all out of the papers, the ship owner or the common carrier [358] has the right to have the vessel go to some other ports than those advertised?

A. Yes; we have experienced that same thing.

Q. And that is very common, as a matter of fact, isn't it?

A. I would not say it is common, but it does happen occasionally.

Q. For instance, if a ship leaves San Francisco for Mediterranean ports, and she has half cargo, if she can, her practice is to pick up the rest of her cargo en route? A. Yes.

Q. And if she could make a fair rate, a rate that was attractive at San Pedro, or at the canal, or anywhere else along the line, she would do so?

A. Yes, sir.

Q. The advertisements would be all out of the papers by that time, wouldn't they? A. Yes, sir.

Q. And she would be regulated by the clause in the bill of lading Mr. Graham showed you, wouldn't she, as to where she was going? A. Yes, sir.

(Testimony of W. J. Lane.)

Q. You have been taking the "Daily Commercial News" and "The Guide" down there at your place ever since 1920, haven't you?

A. We have been taking "The Guide" right along.

Q. "The Guide" and the "Daily Commercial News"? A. Yes, sir.

Q. You take them right along down there at your place, don't you? A. Yes, sir.

Q. And you have ever since 1919, haven't you?

A. Yes, sir.

Q. I notice in this bill of lading the word "deviation" is used; what is "deviation"?

A. Deviation would be a clause there to give the steamship company the privilege of getting away from their stated practice of ports of call or routes within the meaning of that paragraph.

Q. And if they did not have any clause like that, would there be any obligation, without a deviating clause, on the ship to [359] go in any particular route, or any geographical order, do you think, if they advertised differently?

A. No, I don't think the advertising has any effect on what the terms of the bill of lading cover.

Q. The contract, you think, is in the bill of lading?

A. The contract is in the bill of lading, and the advertising is just matter of information.

Q. As a matter of fact, you observe a difference in the advertising with regard to the "Effingham" in "The Guide" and in the "Daily Commercial

(Testimony of W. J. Lane.)

News," do you not? Mr. Graham showed you one and I showed you the other. There is a difference; isn't there? A. Yes.

Q. You notice that difference, don't you?

A. Yes.

Q. So it is not the advertisement, at all, that counts, but it is the bill of lading?

A. It is the clause in the bill of lading.

Q. If they have that clause in the bill of lading, that the ship can go in or out of the customary routes, you think that would let her get away from her usual ports of call?

A. Yes, she could get away from it.

Q. Will you explain to the Court just how you use bills of lading in foreign shipments? You ship goods out of your house to European ports, don't you, with a draft against the bill of lading?

A. Yes.

Q. You will explain that custom to the Court?

A. You mean leading up to the issuance of the bill of lading, or from the time that the bill of lading is issued?

Q. After you get the bill of lading, what do you do with it? How do you collect for your goods?

A. After we get the bill of lading, we have drafts made up, together with a copy of the invoice, and we match those up together, each shipment by its [360] specific bill of lading, and those are tendered the bank here, and the bank here forwards them to its correspondents at the port the shipment is going to, and they, in turn, present the draft to the

(Testimony of W. J. Lane.)

buyer for his acceptance or approval, or whatever manner the shipment is sold in.

Q. Then what would they do with the bill of lading, if he pays the draft or accepts it?

A. The bill of lading after it reaches the bank, do you mean?

Q. Yes.

A. After the other man receives the bill of lading he is expected to turn that in to the steamship company in order to get his goods.

Q. What I was getting at was this: The goods go out with the draft and the bill of lading; then the buyer pays the draft and he gets the bill of lading, doesn't he? A. Yes, he gets the bill of lading.

Q. And the bill of lading represents the goods, so far as he is concerned? A. Yes, sir.

Q. He might even sell the bill of lading while the goods are afloat, might he not? A. Yes.

Q. You buy and sell, and you have bought and sold documents of that character, yourself, haven't you?

A. We have never resold. If the original bill of lading was not used at all, then that usually is recalled and a new one issued.

Q. The bill of lading is the last document as between the shipper and the common carrier, isn't it? A. Yes, sir.

Q. It contains a receipt for the goods, and the contract of carriage? A. Yes, sir.

Q. And that is the ordinary commercial language with regard to a bill of lading, isn't it? A. Yes.

(Testimony of W. J. Lane.)

Q. Bills of lading are practically universally used with regard to sea shipments, aren't they?

A. They are practically the same [361] on all lines.

Q. And, of course, a bill of lading has a great many clauses in it; this deviation clause that you had your attention called to here, you have seen a deviation clause used in bills of lading from ports in various parts of the world, haven't you?

A. In fact, most all the bills of lading have a deviation clause of some kind.

Q. But this particular one that was shown you, this Pacific form of the Emergency Fleet Corporation bill of lading, is used for the transit of goods out of San Francisco, say, to European ports, and from European ports accordingly back to San Francisco? A. Yes.

Q. That is their form, isn't it, and it is used in the Pacific trade to Oriental ports, too, isn't it, or do you know about that?

A. Oriental ports I am not familiar with, because we don't use the Shipping Board for Oriental ports. I don't know whether they had any service there at that time, or not.

Q. Have you had occasion to use the Shipping Board boats for any ports other than European ports? A. No.

Q. That is the only one? A. Yes.

Q. In the European trade, both going and coming, you have used this particular form of bill of lading, haven't you?

(Testimony of W. J. Lane.)

A. We have used them on the eastbound; we never had any west-bound business.

Q. Do you know whether they are used in the westbound business, or not?

A. I don't know for a fact, no.

Q. I wonder if you buy goods in Europe to come out here to San Francisco? A. No.

Q. So that your experience is limited to goods going from San Francisco to Europe?

A. Yes, sir.

Q. I think I asked you about that deviation clause. You have been in this business at least since 1918, and you saw that one [362] as early as that time, that form of bill of lading?

A. Yes, we used them at that time.

Q. You make cargo damage claims sometimes; are you conversant with cargo damage claims at all?

A. No. Cargo damage claims are usually filed by the buyer receiving the shipment. The goods are sold in most instances c. l. f.—cost, insurance and freight—and he files his claim for any damage to any of the shipment.

Q. By goods being sold c. i. f., you mean the draft goes out from here to the foreign bank, and there goes with it usually an insurance policy, an invoice representing the cost, and the bill of lading goes along; those are the documents that usually go, aren't they? A. Yes.

Q. And when you say "c. i. f.," that means "cost, insurance and freight"? A. Yes.

(Testimony of W. J. Lane.)

Q. Your business is usually done that way out of San Francisco, isn't it?

A. Our foreign business is.

Q. And those are what you coll c. i. f. sales, or "cif" sales? A. Yes.

Q. And, correspondingly, sometimes goods are sold out of San Francisco f. o. b. San Francisco, aren't they?

A. The domestic shipments are sold that way.

Q. And that means that the goods are put on the ship at San Francisco, under a contract like that?

A. The goods are put on the ship in any event.

Q. And then the responsibility, after the goods are on the ship, is entirely on the buyer, under an f. o. b. contract?

A. It depends on what point the goods are sold at. It might be New York, or it might be in San Francisco. If it is sold f. o. b. New York, the shipper has to resume any responsibility for damage between here and New York.

Q. And your sales are either c. i. f. sales or they are f. o. b. sales, [363] New York or San Francisco, or some other place, in accordance with your contract of sale? A. Yes, sir.

Q. Your contract of sale shows with great particularity matters of that character, doesn't it?

A. Yes; they are very particular in that respect.

Q. Take a ship like the "Effingham," what would you think her customary route was; have you any information on that?

(Testimony of W. J. Lane.)

A. Her customary route would be through the Panama Canal, and direct from there to Europe, touching at the ports she is expected to call at.

Q. So that when the bill of lading says that she is going to go in or out of her customary route, her customary route would mean that she was going to these European ports she expected to call at?

A. Yes, sir.

Q. And the bill of lading, giving her the privilege of calling out of her customary route, means that she can go to other ports? A. Yes, sir.

Mr. MANNON.—That is all.

Redirect Examination.

Mr. GRAHAM.—If your Honor please, I would like very much to put in the manifest of the "Effingham," merely to show what a very large shipper the firm of Guggenhime & Co. is on a ship which made practically the same voyage as the "West Aleta." The witness has already testified that they were larger shippers on this ship.

Mr. MANNON.—Guggenhimes are considerable shippers out of this port, if that is the admission counsel wants. I think that the manifest on another voyage is not admissible. I merely did not want to put it in the record. Perhaps my admission will meet counsel's wishes.

Mr. GRAHAM.—I would like to put it in the record. [364]

Mr. MANNON.—All right, let it go in the record.

(Testimony of W. J. Lane.)

The COURT.—Very well.

(The document was here marked Respondent's Exhibit "G.")

Mr. GRAHAM.—Q. You testified as to what would be the customary route; in relation to this European-Pacific service of Williams-Dimond at that time, and having seen this advertisement which you have seen, what would customarily be considered to be the customary route of vessels in that trade?

A. The route leading up to the first port of call would be the Panama Canal and direct from there to this first port; then the route from there on is usually taken from the shipping information at this end that the boat is going to touch those ports in the order named.

Q. That is, in the order named in the advertisement, or in some other order?

A. In the advertisement.

Q. Mr. Mannon has asked you as to your definition of the term "deviation"; what do you understand, or, rather, what is generally understood to be the right of the ship to take goods which she has on board in a particular trade or service, how far could she go?

Mr. MANNON.—I object to that unless it is confined to this bill of lading here.

Mr. GRAHAM.—All right, I will confine it to this bill of lading used in this European-Pacific trade.

A. Her deviation could cover considerable

(Testimony of W. J. Lane.)

change in the route, or the order of ports of call; they might just reverse the ports of call in the handling of the cargo; that is to say, instead of going to Hamburg first they might switch that around to the last port of call. There is nothing that binds the steamship company in that bill of lading clause, there, to touch these ports in the manner they expected to sail for. [365]

Q. You testified about "The Guide" and the "Commercial News"; do you know, from the shipper's point of view, whether it is customary to get the route of a vessel from "The Guide," or from the "Commercial News," or from either of them?

A. It is our practice to use "The Guide" entirely for that information.

Q. What do you use the "Daily Commercial News" for, if you use it at all?

A. We use it for getting information like reports from the Railroad Commission, and other information of that type.

Q. So that if there were two conflicting advertisements between the "Daily Commercial News" and "The Guide," customarily, what reliance would be given to one or the other?

A. "The Guide" seems to be the most reliable for that information.

Q. You have testified that the bill of lading represents the contract between the ship and the shipper. In this particular case I show you again this bill of lading, which indicates that the goods were shipped at San Francisco, and were to be de-

(Testimony of W. J. Lane.)

livered at Cardiff. What would the contract customarily be said to be in such a case as that?

Mr. MANNON.—Are you asking him now about the whole contract?

Mr. GRAHAM.—He has testified that the contract is represented by the bill of lading; I am asking him what would be the customary interpretation of that contract.

Mr. MANNON.—I submit, if the Court please, that this witness cannot interpret the contract.

The COURT.—Objection sustained.

Mr. GRAHAM.—Your Honor, the witness has already testified that he is familiar with these bills of lading, that he has used them, that they have been used for a great many years, and that they represent the contract.

The COURT.—They do.

Mr. GRAHAM.—It seems to me that the case here is, what is [366] the interpretation of this contract as a commercial document? We are trying to show that the words "San Francisco to Cardiff" do not necessarily mean San Francisco to Cardiff direct, but that they might mean another route.

The COURT.—He has testified to what the custom is with reference to these matters. As I understand his testimony, that question is covered.

Mr. GRAHAM.—I do not believe, your Honor, he has testified to this.

The COURT.—Not as to those two points?

Mr. GRAHAM.—I am merely trying to get be-

(Testimony of W. J. Lane.)

fore the Court that a customary interpretation of this bill of lading is not to carry the goods from San Francisco direct to Cardiff, or direct to Hamburg, or direct to Rotterdam, as the case might be, but to—

The COURT.—He has so testified.

Mr. GRAHAM.—You say he has testified to that?

The COURT.—I understand he has.

Mr. GRAHAM.—Then that is all.

Recross-examination.

Mr. MANNON.—Q. I want to be perfectly clear about the bill of lading with you, Mr. Lane. I understand that entirely irrespective of what you see in the newspapers in the way of advertising, the vessel, after she leaves San Francisco, and after the bill of lading is issued, and after the advertisements have all stopped, might pick up cargo for some other ports than those mentioned in the bill of lading, or in the advertisements?

A. That is possible, yes.

Q. And that is customarily done where the vessel leaves San Francisco without a full cargo, that is, leaves with space, and goes to a port where she can get some more cargo?

A. Yes. [367]

Q. So that the advertisements, then, are not the things that tell you where a ship is going out of San Francisco necessarily?

A. Well, they tell you the points they are going to touch, but they don't necessarily mean that

(Testimony of W. J. Lane.)

the vessel would touch those ports in the order named in the shipping information.

The COURT.—Q. Or touch only those ports.

A. Or touch only those ports; she could touch at more.

Q. As you understand it, it tells you the ports she will touch?

A. The ports she will touch, and she may touch others.

Mr. MANNON.—Q. At any rate, if the advertisement says the vessel is going to Hamburg, Rotterdam and Cardiff, it does not mean necessarily that she will touch them in that order?

A. We take it as a matter of information that she will touch in that order, but she may deviate from that order.

Q. And you take it that under the bill of lading she has that right? A. Yes.

Q. So that in this case she might go to Hamburg, Rotterdam or Cardiff first? A. Yes.

Q. Or she might go to any one of those second?

A. Yes.

Q. Or she might go to any one of the three third? A. Yes.

Q. And she might add the port of Copenhagen?

A. She might touch at another port in the vicinity.

Q. And she might touch at a port like Danzig, in the Baltic? A. Yes, that is possible.

Q. Or she might add some Spanish ports, possibly?

(Testimony of W. J. Lane.)

A. It is very unusual that they ever go that far south.

Q. Or she might go to any Irish ports?

A. Yes.

Q. Do I understand your testimony to be that where this European Pacific Line was being advertised by Williams, Dimond & Co. in the "Daily Commercial News," that you would not regard those advertisements as accurate?

A. Well, they are accurate to a certain [368] extent, but it is possible that they may be in error at some time or other. We have found that there have been errors in their advertisements, but they usually correct it as soon as they know of it.

Q. It is the fact, then, is it not, that advertisements in "The Guide" are not accurate with regard to where ships are going, necessarily?

A. They are about as close as you can get to being an accurate paper.

Q. You have been testifying about this European-Pacific service, and also with regard to advertisements in "The Guide." I understand, for instance, that the advertising of this ship, the "West Aleta," read to Copenhagen right up to her date of sailing, on her earlier trip, whereas the ship, in fact, went to Hull and to Hamburg; are you conversant with anything of that sort?

A. Yes. When they place a boat on the berth for loading, they make it as broad as they possibly can for ports for which they would like to

(Testimony of W. J. Lane.)

receive cargo; after the boat is on berth for a certain length of time, if there is not sufficient cargo to ports that they expect, in order to make it profitable for them to touch at that port, they will eliminate the port that has the lightest cargo; for instance, if this boat was put on for Copenhagen, and the Copenhagen cargo did not come in in the volume they expected, they would cancel that port of call and just handle the other ports.

Q. And it would not make any difference about where the ship was going, whether she advertised she was going to Copenhagen, or not?

A. No.

Q. That would not affect the matter?

A. The advertisement would not hold them to making that port. [369]

Mr. GRAHAM.—Does your Honor want any more evidence in relation to the custom out of San Francisco and out of Pacific Coast ports to make ports of discharge in other than their geographical order in other services? I mentioned the other day the possibility of showing to your Honor that it was the custom to go in other than geographical order, not only in the European-Pacific service, in the intercoastal service, which Mr. Chandler testified to and gave a very graphic description of having called at Boston, New Brunswick, and then Baltimore—but also in the trans-Pacific trade. If your Honor please, I believe that I can show your Honor that it is also the custom with at least one line on the Pacific

Coast here, in the coastwise trade, to do the same thing, to go in other than geographical order. Does your Honor want to hear any evidence on that point?

The COURT.—No, I don't.

Mr. GRAHAM.—I would like to read into the record what I propose to prove by Mr. Perry Newcombe, of Dodwell & Co., the local agent for the Canadian Government Merchant Marine, Ltd.; and in this respect put into evidence the bill of lading which they use, which carries a customary deviation clause, to call at any port or ports in any order, for any purpose. In this respect we believe that Mr. Newcombe will testify that vessels of the Canadian Government Merchant Marine Line sail from Ocean Falls, north of Vancouver, with paper, which is bulky and bears the same stowage as wine would ordinarily bear; this cargo is on a bill of lading consigned from Ocean Falls to San Francisco; the vessel, in fact, comes from Ocean Falls to San Pedro, and then returns to San Francisco, after having gone by San Francisco, and unloads its cargo in San Francisco or in Oakland. He would further testify that the distance is approximately 500 miles [370] each way, which is approximately the same distance the "West Aleta" made. This is just to show your Honor that this is also the custom in the coastwise trade. I introduce in evidence the Canadian Government Merchant Marine, Ltd., bill of lading as Respondent's Exhibit "H." Mr.

(Testimony of E. B. Stewart.)

Newcombe would further testify that this bill of lading which this country uses has not the words "or beyond" in it, and yet they do what I have just stated for the record.

TESTIMONY OF E. B. STEWART, FOR RESPONDENT.

E. B. STEWART, called for respondent, sworn.

Mr. GRAHAM.—Q. Mr. Stewart, with whom are you associated? A. Leon Israel & Bro.

Q. With whom were you associated in 1919 and 1920? A. The same firm.

Q. What is your position in that firm?

A. Office manager.

Q. Does that firm engage in the export trade from San Francisco to Europe? A. It does.

Q. Did it or did it not at that time?

A. It did.

Q. Have you or have you not had any experience with shipping on vessels in the European-Pacific service? A. I have.

Q. Did you or did you not ship on the steamship "Effingham" leaving San Francisco in December, 1919? A. We did.

Q. I show you, Mr. Stewart, an advertisement which is in the stipulation of facts; it is about the steamship "Effingham," of the European-Pacific Line; you will note that this schedule for the "Effingham" gives London and Liverpool. Do you remember where you had cargo destined for on the "Effingham"? A. Liverpool.

(Testimony of E. B. Stewart.)

Q. That is for the last port as indicated in the advertisement? A. Yes, sir.

Q. Are you familiar with the ordinary Pacific form of the Shipping Board bill of lading which I show you? A. Yes. [371]

Q. I read to you the deviation clause in that bill of lading:

> "To touch at any port or ports, in any rotation or order, in *our* out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff"—

and ask you as a shipper what is the customary interpretation of that clause in relation to the voyage of the steamship "West Aleta," which it is stipulated was as advertised to the ports of Hamburg, Rotterdam and Cardiff.

A. It would be my understanding that the steamer could go to any of those ports, either first, or return to them on her regular journey.

Q. Is it or is it not the customary understanding of the shipping public in San Francisco that the vessel could go past, say, the port of Cardiff and to Hamburg, and then back to Cardiff and discharge Cardiff cargo?

A. It is my understanding that she could.

Q. Do you subscribe to any shipping papers in San Francisco?

A. Yes, we subscribe to "The Guide."

Q. Do you subscribe to any other?

A. We did subscribe to the "Commercial News."

Q. In 1919 and 1920? A. Yes.

(Testimony of E. B. Stewart.)

Q. What do you subscribe to "The Guide" for?

A. For information in shipping.

Q. What did you subscribe to the "Daily Commercial News" for?

A. Practically for the same thing.

Q. In case you had a bill of lading which read as this does, San Francisco to Cardiff, how would you find out what the route of that vessel was going to be, if you wanted to know?

A. From "The Guide."

Q. In case there were two conflicting advertisements, as there were in the case of the "West Aleta," one in the "Daily Commercial News" and in the other "The Guide"—I will read to you the advertisement in the "Daily Commercial News" as to the "Effingham": [372] "For London, Liverpool and Hamburg," and in "The Guide," "Hamburg, London and Liverpool"; what would be the custom relative to the reliance of the shipping trade in those two advertisements?

A. We always found "The Guide" very accurate, but in a case of that kind I would take the matter up with the steamship agents.

Q. Would you or wouldn't you feel that the burden was on you as a shipper?

A. I would think that the burden was on the shipper to obtain his information.

Q. In this European-Pacific trade, Mr. Stewart, what is the customary understanding of the limits of that trade, the range; is it confined to any particular range, or do you know.

(Testimony of E. B. Stewart.)

A. I don't know.

Q. You don't know that? A. No, sir.

Q. Do you know or did you ever hear of the Hamburg-Bordeaux range?

A. Yes, I have heard of it.

Q. What does that mean?

Mr. MANNON.—If your Honor please, the witness testified he does not know about this trade, so we object to this evidence as incompetent.

Mr. GRAHAM.—I think, your Honor, the witness knows about the trade. He has been in this European-Pacific trade for some time. I merely am asking him if he knows the range that the European-Pacific trade covers.

Mr. MANNON.—I will withdraw the objection before counsel tells the witness further.

The COURT.—Very well, proceed.

A. That is a shipping circle or route in which these steamers call at various ports of trade.

Mr. GRAHAM.—Q. Are you familiar with a bill of lading which, [373] in addition to the clause I have read you, has in it the words to call at any port or places whatsoever, or out of or beyond the route of said port of discharge?

A. Yes, I have seen bills of lading that way.

Q. Is it customary to draw any distinction between these two forms of bills of lading, that you know of?

The COURT.—I don't think that question is proper. You are asking him what is the customary understanding. I do not think that evidence

(Testimony of E. B. Stewart.)

is admissible. What is done, what is the custom under these bills of lading, is admissible.

Mr. GRAHAM.—I will alter the form of my question, your Honor.

Q. Taking these two forms as I have read them, what is customarily done in shipping out of San Francisco, do you know, or is there any customary difference in the rights of the ship?

A. I don't quite understand the question.

Q. You appreciate that there are two different forms. I show you here a French line form which reads, in addition to the deviation clause which I have already quoted to you, "Or beyond"; what is the customary interpretation in the shipping trade of those two documents?

A. I would understand a bill of lading that included the clause "and/or beyond" to permit the steamer to go out of its usual trade course or its trade route.

The COURT.—If I find that I am not bound by the terms of the bill of lading, and that the terms are doubtful and that, therefore, I may resort to custom to reach a proper interpretation of the construction of these terms, this testimony would be of no service to me. It is his construction, a layman's construction. He is not telling me what is done by the trade where these bills of lading are in use.

Mr. GRAHAM.—I want it correctly in the record, your Honor, [374] so that it will not be thrown out. I am trying to obtain his idea of the

(Testimony of E. B. Stewart.)

differentiation in a bill of lading having the words "or beyond"—

The COURT.—His interpretation is of no service.

Mr. GRAHAM.—The interpretation of the trade which he represents.

The COURT.—I don't think that is admissible. We want the custom; we don't want what his interpretation of it is.

Mr. GRAHAM.—That is all

Cross-examination.

Mr. MANNON.—Q. Leon, Israel & Co. are a San Francisco import and export house?

A. They are a New York house, with an office in San Francisco.

Q. But they have an office here in San Francisco, haven't they? A. Oh, yes.

Q. And they handle goods to European ports?

A. Yes.

Q. In 1919 and 1920, they were handling goods for Oriental ports, also, weren't they? A. Yes.

Q. And they were extensively in the rice trade at that time, weren't they?

A. We are in the general importing and exporting business.

Q. So that your business was one that in 1919 and 1920, and right up to date, has had to do with European ports, with Oriental ports, and with Australian ports?

A. In the last few years I have had no Oriental business—we have had no Oriental business.

(Testimony of E. B. Stewart.)

Q. But at least until after January of 1920, you were very extensively in the Oriental business, weren't you, in the rice business?

A. Yes, up to 1920 we handled considerable rice.

Q. When was it that you quit handling rice?

A. I think about 1921.

,Q. During that perifod, have you had any South American business, [375] with South American ports?

A. Yes, I have had considerable business.

Q. I don't suppose you have had any African business?

A. Not that I recall offhand; no.

Q. And in all this extensive business you have had, you have had occasion to use bills of lading. of course, have you not? A. Oh, yes.

Q. And in regard to every shipment you use a bill of lading, don't you? A. Yes.

Q. The bill of lading is the receipt for the goods and the contract for their carriage, isn't it?

A. Yes, sir.

Q. And the bill of lading is always the thing that you look to see what the contract of carriage is, isn't it? A. Yes.

Q. You are thoroughly familiar with this method of doing business, whereby the bill of lading goes through the bank in the town or in the city where the shipper is, with a draft, and with some other documents to the place of destination, where the bill of lading is taken up, the draft is paid, and the bill of lading then delivered? A. Yes, sir.

(Testimony of E. B. Stewart.)

Q. You are conversant with that, aren't you?

A. I am, yes.

Q. What other papers are sent forth?

A. Consular invoice, commercial invoice.

Q. Anything else?

A. On certain commodities, weight certificates.

Q. And certificates of inspection?

A. Inspection certificates.

Q. That is, weight, quality and condititon certificates? A. Yes.

Q. Anything else?

A. I don't recall now. It all depends on certain parts of the country; some countries require more data and information than other countries require. Ordinarily, the draft attached to the bill of lading, the marine insurance certificate, and the quality certificate are sufficient. [376]

Q. And those are the things that Leon, Israel & Co. have practically always sent during all the time that you have been with them?

A. Yes, we support all drafts with proper documents to different countries.

Q. And the documents you send are the documents you just told me about? A. Yes, sir.

Q. You buy goods that way sometimes, too, don't you? A. Yes, sir.

Q. And when you buy goods at San Francisco, or to be delivered to the port of San Francisco, from whatever point in the world they are coming, you get substantially the same papers, do you not?

A. Yes, sir.

(Testimony of E. B. Stewart.)

Q. In other words, these maritime documents and maritime methods of doing business extend all over the world; that is correct, isn't it? A. Yes.

Q. And these bills of lading that you have been asked about are bills of lading that are in use all over the world, aren't they?

A. I understand they are, yes.

Q. Let me be certain that you know of these things of your own knowledge. Do you handle them down there in your business? A. Yes, sir.

Q. You are a man, then, who is conversant with this sort of thing, aren't you? A. Yes, sir.

Q. So that you know that in shipments by water there is practically always a bill of lading?

A. Yes, sir.

Q. And the bill of lading is the contract of carriage that is looked to if there are any cargo damage claims? A. Yes, sir.

Q. You know that of your own knowledge, don't you? A. Yes, sir.

Q. When you want to find out what rights the ship has and what rights the shipper has, you look at your bill of lading, don't you?

A. Yes, sir. [377]

Q. Have you had occasion to do that many times, yourself? A. Yes, sir.

Q. You have made many cargo damage claims, haven't you? A. Yes, sir.

Q. And when you make them, and questions arise between you and the ship, you look at the clauses in

(Testimony of E. B. Stewart.)

the bill of lading to see what the ship has the right to do? A. Yes, sir.

Q. And that applies to Seattle, and to San Francisco, and to all the Pacific Coast ports, doesn't it?

A. Yes, sir.

Q. And it applies to Hongkong, Kobe, and all the Oriental ports, doesn't it? A. Yes, sir.

Q. And it applies to this European-Pacific service we have been speaking of, Danzig, Falmouth, Hamburg, Cardiff, and Rotterdam, so far as you know? A. So far as I know, yes.

Q. Well, you know that it does, don't you?

A. Yes, sir.

Q. And it applies to all the Mediterranean ports that you are conversant with, doesn't it?

A. Yes, sir.

Q. So that this particular form of bill of lading is in use for shipments from San Francisco to all ports in the world, during the time you have been in business, isn't it? A. Yes, sir.

Q. And, likewise, the same form of bill of lading has been in use for shipments from all parts of the world to San Francisco, has it not?

A. Yes, sir, I believe it has.

Q. You know that in handling the bills of lading in your business, don't you?

A. I don't recall any shipments arriving for our account on that particular bill of lading. Most of our shipments came in on bills of lading other than that one. We used that bill of lading for outbound

(Testimony of E. B. Stewart.)

purposes but I do not recall any shipments coming in on that bill of lading.

Q. But you do know that the Shipping Board vessels all use that form? A. Yes.

Q. And other ships use substantially the same?

A. Practically the same. [378]

Q. Some use different forms; that is correct, isn't it? A. Yes.

Q. With regard to this so-called "liberty-to-call" clause, the deviation clause that is in this Pacific form of Emergency Fleet Corporation bill of lading, which reads, "and to touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, that particular clause, or one almost identical with it, has been in very many bills of lading that you personally have handled ever since you have been in business?

A. Yes, they all carry certain clauses.

Q. I wanted to find out if this particular one, if you know, has been.

A. I don't recall whether it is identical, or not, but they all carry similar clauses.

Q. Then you do not compare them closely enough to see what they do mean?

A. No, we don't compare them very closely; we understand generally what they are, but we don't compare them.

Q. Have you ever had occasion, on cargo damage claims, to find out exactly what they mean?

A. We have had considerable cargo damage

(Testimony of E. B. Stewart.)

claims, but I don't recall that we ever had any controversy over the bill of lading.

Q. Who handles the cargo-damage claims down in your concern? A. I do.

Q. And you have never used the bill of lading in determining what your rights were in a cargo-damage claim?

A. We have used the bill of lading in support of our claim, yes.

Q. Have you ever had any argument about the bill of lading in order to determine those matters?

A. No, sir.

Q. Your construction was always taken as correct, was it?

A. There was no question about our construction.

Q. There never has been any question made about any construction [379] you have put on the bill of lading?

A. No, we have had no question about our bill of lading.

Q. No one has ever questioned any construction you put on the bill of lading?

A. I don't recall that there was ever any question about it.

Q. You are perfectly clear on that, aren't you?

A. I think I am, yes.

Q. This bill of lading uses the word "deviate" in this clause: "The vessel shall have liberty to deviate for the purpose of making trial trips," etc. Do you know anything about the meaning of that term "deviate"?

(Testimony of E. B. Stewart.)

A. I know what the word "deviate" means.

Q. I mean with regard to shipping generally. Are you clear that you know about that?

A. I think I do, yes.

Q. Please state it.

A. It would give the steamer the privilege of going out of her certain routes, or to other countries.

Q. For instance, if it were headed for England on a customary route, as you say, she might go to Mediterranean ports, if she had a deviation clause?

A. That I could not say.

Q. Could she go to African ports, do you think?

A. I don't think so.

Q. Why not?

A. Well, they usually have their certain trade routes, and certain places, and they usually stay in that vicinity.

Q. In this bill of lading clause here it says: "A vessel shall have the right to touch at any port or ports"; does that mean any port or ports?

A. In her trade route, I would understand that to mean.

Q. It is limited to her trade route?

A. To her trade route I would think.

Q. It says, "in any rotation or order, in or out of her customary route." Does that mean in or out of her customary trade route?

A. No, I don't think it does.

Q. It says, "out of her customary trade route"; doesn't that [380] affect your mind at all, where

(Testimony of E. B. Stewart.)

it says that a vessel can go out of the customary route?

A. That clause might permit the steamer to go out of her way some short distance and pick up certain cargo, or to discharge certain cargo, that might not be exactly in line of her regular route; I would think she could.

Q. She could go out of her customary route, then? A. I think so, yes.

Q. Could she, for instance, take cargo through mine fields, do you think, if there were mine fields planted as the result of the war?

A. Well, it all depends.

Q. What does it depend on?

A. On her route, I would understand. If there were mine fields in her route, she could probably take cargo through them.

Q. And if those mine fields were on her customary route, she could take her cargo through them?

A. If there were mine fields on her route she could take her cargo through.

Q. And whatever the order of ports of call might be that were advertised, that would not make any difference, would it?

A. Not with the bill of lading clause that gave her the privilege of going from port to port.

Q. So that if a vessel were advertised for Cardiff and Rotterdam, that would mean that she might go either to Rotterdam first, or to Cardiff first, might it not? A. I think so, yes.

Q. And so, if she were advertised only for Car-

(Testimony of E. B. Stewart.)

diff and Rotterdam, if she wanted to she could go to Hamburg? A. Yes, sir.

Q. And if she were only advertised for Cardiff, she could go to Copenhagen, if she wanted to?

A. I think so, if she were in that trade route.

Q. And if she were advertised for Cardiff, she could take cargo to Danzig and then go back to Cardiff if she wanted to?

A. I would think so, if that were in her trade route. [381]

Q. Would it make any difference if it were in her trade route, or not, if she has the clause to go in or out of the customary route?

A. I think she could go out of her route.

Q. She could go out of her customary route, if she had this clause in the bill of lading?

A. Yes, sir.

Q. Supposing she didn't have any clause like this deviation clause I have read to you in her bill of lading, and she was advertised for Hamburg, Rotterdam and Cardiff, could she go to any one of those, without this clause that I have read to you, in or out of the customary route, and to call at any port or ports more than once?

A. And what was the question?

Mr. MANNON.—Mr. Reporter, read the question.

(Question read by the reporter.)

A. She would certainly have the clause in her bill of lading.

Q. What I am trying to get at is whether the

(Testimony of E. B. Stewart.)

clause in the bill of lading is the important thing, or not. Suppose she did not have any clause at all like the one I have read to you in the bill of lading, and she advertised she was going to Hamburg, Rotterdam and Cardiff, would you understand under this custom you are speaking about that she could go, say, to Cardiff first?

A. If she was advertised to go to Hamburg, Rotterdam and Cardiff?

Q. Yes.

A. I would understand that she could go to those three ports, if she was advertised and that was her special trip or special sailing; I would not understand she would make other side trips, if she did not have a deviation clause in her bill of lading.

Q. And you would understand she could go without any deviation clause in the bill of lading to any of those ports in any order?

A. Yes, sir.

Q. She could go to Hamburg first?

A. Yes, sir. [382]

Q. Or she could go to Rotterdam first?

A. Yes, sir.

Q. Or she could go to Cardiff first?

A. Yes, sir.

Q. Could she go to Copenhagen, without any deviation clause, on a trip like that?

A. If she was advertised and scheduled to make those three ports, and without any clauses in her bill of lading I don't think she could take off

(Testimony of E. B. Stewart.)

trips to various other ports. I am not prepared to say whether they do, or not. I don't imagine that they would.

Q. Of course, that is all imagination, and not customary, and your own interpretation?

A. Well, I am speaking from experience.

Q. The experience you speak of is the negotiations that you have had? A. Yes, sir.

Q. You have never had any experience with a bill of lading that did not have a deviation clause in it, did you? A. I don't recall.

Q. You never have seen one that didn't have a deviation clause in it, did you?

A. I don't recall.

Q. On the other hand, if the deviation clause is in the bill of lading, and if there is certain advertisement in one newspaper that says, "This vessel is going to Cardiff and Rotterdam," and another newspaper advertisement says the vessel is going to Hamburg, Rotterdam and Cardiff, you could not tell from the advertisement where the vessel was going, could you?

A. It would be up to me to find out where she was going.

Q. Then you would go and ask the ship agents?

A. Well, yes, I would communicate with the steamer's agents.

Q. If they told you what ports they were going to, that would not affect your mind as to the order she would go, would it, if she had a deviation clause? A. No, it would not.

(Testimony of E. B. Stewart.)

Q. It would be the deviation clause, it would not be the advertisement?

A. The advertisement is usually a matter of information where the steamer is going, so you can book your cargo. However, [383] if she did not go directly to the first port mentioned, I think she would have a right to go elsewhere and—

Q. Just a minute. What I wanted to find out about was where advertisements are conflicting, like they were on the "Effingham," you don't expect those advertisements to be any part of your contract of carriage that is in the bill of lading, do you?

A. The contract of carriage is in the bill of lading.

Q. And then what the ship owner or the ship agents may tell you is not the contract—the contract is in the bill of lading, isn't it?

A. The contract is the bill of lading.

Q. That is the thing you buy and sell all the time, isn't it?

A. The bill of lading, yes.

Q. And that is done in ports all over the world, isn't it? A. Yes.

Q. You know that to be the fact, don't you?

A. Yes.

Q. You have been asked some questions about the Hamburg-Bordeaux range in this European-Pacific service, and in this European-Pacific line; as a matter of fact, in that Hamburg-Bordeaux range you would have to know what was within

(Testimony of E. B. Stewart.)

that range; for instance, you would have to know whether Danzig was in it; would you say that Danzig was in the Hamburg-Bordeaux range?

A. I couldn't say.

Q. You don't know? A. No.

Q. As a matter of fact, you would not know whether Barcelona was in it, would you?

A. I would say that Barcelona would not be in that range.

Q. Why is it you say that Baltic ports, like Danzig, are in the European-Pacific range, whereas Mediterranean ports are not?

A. That is out of the trade line.

Q. As a matter of fact, some people have testified here that these ships sometimes went to Spanish ports: Is that right?

A. I don't know. [384]

Q. You can't testify about that, can you?

A. No.

Q. You don't know whether they are right or wrong?

A. I don't know whether they are right or wrong.

Q. So you can testify to anything about the Hamburg-Bordeaux range?

A. All that I know is that that was a trade route that these steamers were engaged in, that certain particular route; I am not familiar with every port that they touched on in that route.

Q. You don't know whether that would include ports in the Baltic sea, or not?

A. No, I do not.

(Testimony of E. B. Stewart.)

Q. You don't know whether it would include Spanish ports in it?

A. I would not imagine it would, though I don't know.

Q. There is not any fixed custom about that that you can testify to, is there?

A. As I understand it, when a steamer is in a certain service, she has a certain range of ports.

Q. And this Hamburg-Bordeaux range, there isn't any custom about that, is there, whether it includes Danzig or not? A. I don't know.

Q. You don't know that, do you? A. No.

Q. And there isn't any custom as to whether it includes Spanish ports? A. I don't know.

Q. So you cannot testify about any custom as regards the Hamburg-Bordeaux range, including Spanish ports, or Baltic ports, or not? A. No.

Redirect Examination.

Mr. GRAHAM.—Q. Mr. Stewart, going back to the route and the custom of vessels in that particular service at that time, what was customarily done by the shipping public, shipping under these bills of lading with that clause, and in that service, did they ship on vessels going in or out of the geographical order, or didn't they?

A. You mean if cargo was consigned to a particular port? [385]

Q. Yes. Take your case, the "Effingham": Was that the customary practice, or wasn't it?

A. Yes, it was customary.

Q. Mr. Mannon asked you some questions about

(Testimony of E. B. Stewart.)

claims; are you or are you not insured against cargo loss? A. We are.

Mr. MANNON.—I submit that that is immaterial.

The COURT.—I think so. Objection sustained.

Mr. GRAHAM.—That is all.

Recross-examination.

Mr. MANNON.—Q. With regard to your own cargo on the "Effingham," where was your cargo destined for? A. Liverpool.

Q. Out of San Francisco?

A. From San Francisco to Liverpool.

Q. Suppose that cargo had been lost after the ship passed Liverpool, without stopping there, and while she was entering the port of Danzig in the Baltic, would there have been any custom for you to make a claim for that against anybody, or not?

A. We would make a claim against the insurance company.

Q. Do you know whether there has been any custom for the insurance company to make any claim against the ship, or not? A. I don't know.

Q. You don't know? A. No.

Q. In other words, your recourse, if you are insured, is against the insurance company?

A. Yes, if it is an insurance loss.

Q. And you don't take such a claim up with the carrier, at all, yourself?

A. We always notify both carrier and insurance company in case of claim.

(Testimony of E. B. Stewart.)

Q. But your negotiations are with the insurance company? A. Yes, sir.

Q. Not with the carrier? A. No.

Q. You do your collecting from the insurance company? A. Yes.

Q. You don't know whether there is any custom for the insurance [386] company to collect from the carrier in the case I mention, or not?

A. No, I do not.

Q. You don't know that? A. No.

Q. There is not any custom, then, so far as you know: That is right, isn't it? A. Yes.

Q. You don't know whether there is any difference between your insurance policy and your bill of lading?

A. Yes, there is quite a difference between the two. A marine insurance policy is simply a protection to your shipment. The bill of lading is a contract with the steamship company to carry your shipment.

Q. So that you would not be able to say whether there was any custom at all about making a claim against the common carrier, where you ship your goods out of this port, say, for Liverpool, and the vessel had been lost as she was entering Danzig?

A. I would make my claim against the insurance company.

Q. You don't know whether there is any custom for anybody to make a claim, or not to make a claim against the common carrier, the ship owner?

(Testimony of E. B. Stewart.)

A. We have had claims against the ship owners.

Q. In a case of that kind, would you or would you not, yourself, make a claim?

A. I would make the claim against the insurance company.

Q. And if you had not been insured, you would make the claim against the ship owner?

A. As I understand it, the insurance policy would cover the loss.

Q. But if you had not been insured, you would make the claim against the ship owner?

A. I would have been insured.

Q. You would have made claims, where you were not insured?

A. Not for marine damage, but insurance damage.

Q. So you don't know what you would have done if you had not been insured?

A. Where we have advice that a claim is necessary [387] we communicate with all concerned, so there will be no mistake about the filing of the claim.

Q. And your reliance is entirely on the insurance company?

A. If it is an insurance damage.

Q. And you expect these deviation damages to be insurance damages? A. Yes.

Q. And there is not any custom on your part to waive anything against the insurance companies, at all, is there?

(Testimony of E. B. Stewart.)

A. Not if I am properly protected by an insurance policy, no.

Mr. GRAHAM.—Q. In case you are protected in your insurance from a deviation and the vessel, with your cargo, instead of going to Cardiff, went to Hamburg, would the insurance company pay you, or wouldn't they?

Mr. MANNON.—I object to that as immaterial.

Mr. GRAHAM.—Mr. Mannon has gone rather deeply into the question whether the insurance company would or would not do a particular thing. I am merely trying to find out whether the insurance company would pay this particular amount, or not.

The COURT.—Objection sustained.

Mr. GRAHAM.—In this case it is in the stipulation of facts that the insurance company is the real party in interest; it is not in the stipulation as the real party in interest, but it is indicated in the statement that the insurance companies paid the loss. I would like to have the witness testify how those payments are made.

Mr. MANNON.—And it is also a fact, is it not, Mr. Graham, that this particular ship was insured against deviation? It was so insured in the American Club.

Mr. GRAHAM.—I don't know whether that is the fact, or not, Mr. Mannon; I really don't know. [388]

Mr. MANNON.—That is the fact. We will state that as the fact.

(Testimony of William J. Murray.)

The COURT.—I will sustain the objection.

Mr. GRAHAM.—That is all.

TESTIMONY OF WILLIAM J. MURRAY, FOR RESPONDENT.

WILLIAM J. MURRAY, called for the respondent, sworn.

Mr. GRAHAM.—Q. With whom are you associated, Mr. Murray?

A. The California Steamship Company.

Q. With whom were you associated in 1919 and 1920?

A. In 1919 and 1920 I was a marine surveyor.

Q. Did you or did you not survey vessels operated by Williams, Dimond? A. Yes, I did.

Q. I show you a copy of a stowage plant of the steamship "West Aleta," which has been introduced in evidence, from which you will note that the vessel had Cardiff, Rotterdam and Hamburg cargo. And it is stipulated that the amount of the Cardiff cargo, which consisted entirely of barrels of wine, was 2,634 tons; that the amount of Rotterdam cargo, which consisted of general merchandise, some wine, was 1,503 tons; and that the amount of Hamburg cargo, which consisted of general merchandise, was 661 tons. As a surveyor of Shipping Board vessels, would it, in your opinion, have been possible to have stowed this vessel with the amount of cargo which I have indicated to you, with the amount of wine which they had on board, to have discharged

(Testimony of William J. Murray.)

Cardiff first, then gone to Rotterdam and discharged Rotterdam, and then gone to Hamburg, bearing in mind that the Hamburg cargo is stipulated to have been general merchandise, and the Cardiff cargo is stipulated to have been solely wine.

A. Well, that would depend entirely on the way the cargo was received, and also on the future movements [389] of the vessel after the discharge of the present cargo.

Q. Granted that the future movements of the vessel were to sail directly from the port of San Francisco, which it is stipulated it did, to Europe, could it have been stowed so that Cardiff could have come out first with that much wine on the vessel?

A. You understood my answer; I said "future movement of the vessel after this cargo was discharged."

Q. The ports of call would have been Rotterdam and Hamburg after she left Cardiff; could you have loaded to discharge Cardiff first?

A. I don't think you get the point yet that I mean; I mean her return voyage, having the return voyage in sight; that would have a great deal to do with the loading.

Q. Mr. Hooper, of Williams, Dimond & Co. has testified—

Mr. MANNON.—If your Honor please, I object to any statement to this witness as to what Mr. Hooper has testified. This is an expert witness.

The COURT.—Objection sustained.

(Testimony of William J. Murray.)

Mr. GRAHAM.—Q. Do you know where the return cargo of these vessels in the European-Pacific service was picked up?

A. No, I was not familiar with the trade.

Q. You don't know anything about the return cargo?

A. No, I was not familiar with it.

Q. So you cannot say whether you could have loaded 12,000 barrels of wine on that vessel for discharge at Cardiff, first? A. I should say not.

Q. Concerning this return cargo, on the supposition that the return cargo on this vessel was to be loaded at United Kingdom ports, what would your answer then be as to the discharge at Cardiff first?

A. I would load her in that case for discharge at United Kingdom ports last. [390]

Cross-examination.

Mr. MANNON.—Q. Were you employed as marine surveyor by Williams, Dimond & Co. in 1919 and 1920?

A. Yes, I was on a number of their vessels.

Q. But you were not working exclusively for them, were you, Mr. Murray? A. No.

Q. You worked for Williams, Dimond & Co., and you worked for other people?

A. For other people, as well.

Q. How big a vessel are you testifying about here?

A. Well, I have not this ship in mind particularly. I figure that this ship is what we would call 8,800 of 9,000 ton deadweight.

(Testimony of William J. Murray.)

Q. And it doesn't make any particular difference in your mind what kind of a ship she was, in testifying, does it, whether she was 8,800 or 9,000 deadweight, or 7,000 or 10,000?

A. No, that is immaterial.

Q. And there is nothing in your mind particularly, either, as to what kind of a ship she was, if she was a general cargo ship, is there?

A. No, sir.

Q. All these Williams-Dimond ships which went out of San Francisco during 1919 and 1920 that you had anything to do with were loaded with reference to the return voyage, were they not?

A. Not all of them.

Q. Were any of them?

A. I loaded a number of those ships going to the east coast, some of them direct to New York, alone, some of them going to Philadelphia and New York; I loaded a number of ships with a full cargo of grain, and of flour for one port discharge.

Q. And you loaded some of them going to the east coast of the United States and then going over to the United Kingdom and continental ports?

A. No, I never knew of a cargo that I had anything [391] at all to do with that went that route.

Q. Did you have anything to do with the "Consumsett"? A. I don't recall it.

Q. You said something when examined by Mr. Graham about the necessity of loading the vessel having regard to the return voyage; what did you mean by that?

(Testimony of William J. Murray.)

A. Well, I will tell you: In this case here you are going up the English Channel into the North Sea; if you went to Cardiff and discharged the bulk of your cargo and then went over to Rotterdam and to Hamburg and discharged, your ship was then what we call "flying light"; she was coming out of the North Sea down into the English Channel, where the weather is very severe, and where a light ship is at a decided disadvantage. Then another feature would be, if they had in view a return cargo, to avoid going into the same port a second time.

Q. And what would be another feature in regard to the stowage?

A. Taking into consideration the general seaworthiness of the vessel, and the care of the vessel, the safety of the vessel.

Q. And in doing that you consider the vessel on the return voyage as well as on the outbound voyage? A. Exactly.

Q. And in all of the work you did for Williams-Dimond, that was one of the factors you took into consideration, was it?

A. Always on instructions from the office as to what was planned; of course, as a surveyor I had nothing at all to say about the routing of the ship; my duty was to supervise the loading of the vessel, and see that she was in a seaworthy condition when loaded, and give her a certificate accordingly.

Q. Would it be practicable to take a ship like the "West Aleta," an 8,800-ton ship we have talked of

(Testimony of William J. Murray.)

her here as being, and put on 11,000 barrels of wine aboard her, and take them to Cardiff, without any other cargo at all?

A. Take it to Cardiff without any [392] other cargo?

Q. Yes.

A. Why, certainly; you mean load part cargo for Cardiff?

Q. Yes. A. Certainly.

Q. That could have been done? A. Yes, sir.

Q. And then you could have loaded on at Cardiff, couldn't you, under your direction, the other cargo the boat had for Rotterdam and Hamburg?

A. That would depend entirely as to what cargo there was. It is very evident in this ship that they have loaded wet goods over dry goods; that is something we have always guarded against.

Q. Did they do that in this ship?

A. I see they have it in the deck.

Q. Then that was not loaded right, was it?

A. Oh, yes, it was loaded right, there is no question at all about it, the ship can be made seaworthy, but I am talking about taking precautions.

Q. As a matter of fact, your safest stowage is to have the dry goods on top and the wet goods on the bottom, to keep the wet goods from breaking and the contents running down onto the dry goods?

A. Exactly.

Q. And this was not loaded that way?

A. To a great extent it was.

Q. But they had some wet goods over dry goods?

(Testimony of William J. Murray.)

A. I would not say over the dry goods; they had some wine on the upper deck.

Q. That doesn't suit you as a proper method of stowage, does it?

A. If there was a chance to take care of it in some other way.

Q. You would not have done that?

A. Not if I could have avoided it. This ship would take, say, a week to load; your cargo comes along, and it has to be taken care of as it comes; it is not like putting it in the warehouse, where you can put it on the floor, here, and put more on the floor, there, and leave little alleyways for you; you have to close the ship up. [393]

Q. By closing the ship up, you mean closing up the different alleyways and hatches? A. Yes.

Q. So that the way the cargo was delivered to the ship had a good deal to do with the way it was stowed, did it? A. Yes.

Q. And it did on this ship, did it?

A. I don't think I had anything at all to do with this ship.

Q. It is a fact, though, that one of the things that has to do with the way you stow the ship is the manner in which you receive the goods on the ship?

A. Yes, that has a lot to do with it, and also on the future movements of the ship. In our trade, now, we have ships in the Australian trade; they are going to four ports, Adelaide, Melbourne, Sydney, Newcastle; geographically, in rotation, it is

(Testimony of William J. Murray.)

Newcastle, Sydney, Melbourne, Adelaide. If we went into Newcastle and discharged our cargo, and then to Sydney, and then to Melbourne, and then to Adelaide, and had to come back to New Castle to load coal, it would mean entering Newcastle the second time, it would be coming back through a passage which is just as treacherous and just as bad from the weather point of view, through the Bass Straits, coming around the southeast end of Australia, as it is in the North Sea and in the English Channel. Then, again, we may have cargo destined, when the last load had come on, so when you get your deckload, the bulk of your cargo for Adelaide—

Q. Just a moment, Mr. Murray, I am afraid you are not answering the question. I wanted to find out from you, and I think you have not been asked any questions about the rotation of ports of call, but I wanted to find out from you whether you could have put on this ship in San Francisco nothing at all but the cargo for Rotterdam and for Hamburg, and have taken it over there in that ship without any Cardiff cargo?

A. Oh, there is no question about that. [394]

Q. Could you, or couldn't you? A. Yes.

Q. Without any cargo at all except the Hamburg cargo, could you have had that ship laden in San Francisco with Hamburg cargo alone and taken it to Hamburg out of San Francisco?

A. Sure, you could.

Q. And with the stowage plan before you, you

(Testimony of William J. Murray.)

could have taken that ship to Cardiff and had her so laden that you could have taken the wine out of her first, couldn't you?

A. There is no doubt about it if that was desired.

Q. If it were also desired to have the Cardiff cargo taken out first and the Rotterdam cargo taken out of her second, you could have accomplished that, couldn't you?

A. It could have been done, just exactly as I said a moment ago about our Australian ships.

Q. Just confine yourself to an answer to my question. You could have loaded that ship so that the Rotterdam cargo could have been taken out of her second; Cardiff first and Rotterdam second?

A. Well, now, let me see. No, I don't believe you could. There was too much wine, judging from the space that is taken up here.

Q. Too much wine?

A. Too much wine for Cardiff.

Q. Then it would not have been possible to have loaded that ship so you could have taken the wine out at Cardiff; is that what is the matter, you could not have taken the wine out at Cardiff?

A. No, I don't see how you could have done it.

Q. Not in any way at all?

A. No, I don't see how you could have done it.

Q. But you could have loaded the ship with the wine you had for Cardiff, without anything else on the ship, couldn't you? A. Oh, certainly.

Q. And have unloaded that? A. Yes.

(Testimony of William J. Murray.)

Q. And you could have carried from Cardiff to Rotterdam the [395] Rotterdam cargo in that ship, with nothing else in the ship?

A. From Cardiff to Rotterdam?

Q. Yes, from Cardiff to Rotterdam.

A. You have rice, you can't stow that under wine; you have canned goods, you can't stow that under wine. You have merchandise, beans, rice. Without having the quantities before me, I don't see how you could afford to take the chance to stow that wine for first discharge, and then the other cargo for second discharge.

Q. Your trouble is not about stowing the wine at all; you would get it to Cardiff all right, wouldn't you?

A. It is the safety of the cargo underneath it.

Q. With that ship loaded as she was, she could put into Cardiff, couldn't she, or could she?

A. Put into Cardiff?

Q. Yes.

A. There was nothing to prevent her going to Cardiff.

Q. When she put into Cardiff would it be possible to take the wine off at Cardiff?

A. By discharging your shelter-deck there.

Q. So that the wine could have been taken off at Cardiff, could it?

A. You would have to come pretty near discharging your ship to do it.

Q. Well, you know, don't you, whether or not the wine could have been taken off at Cardiff?

(Testimony of William J. Murray.)

A. No, I don't.

Q. You don't know whether the wine could have been taken off at Cardiff, or not?

A. No, I don't, and nobody else could tell that.

Q. And you don't know whether the Rotterdam cargo could have been taken off at Rotterdam, either: Is that right? A. No.

Q. And you don't know whether the Hamburg cargo could have been taken off at Hamburg?

A. Oh, yes.

Q. The Hamburg cargo could have been taken off at Hamburg?

A. Yes, you can see that plainly.

Q. You know, as a matter of business, don't you, that that ship, [396] laden as she was, arriving at the port of Cardiff, could have been unloaded as to the wine?

A. The ship could have been discharged entirely there, everything that was in the way put on the wharf, and then reloaded back again.

Q. When that ship got to Cardiff, loaded as she was, the wine could have been taken off, couldn't it? Will you please answer that question?

A. The whole ship could have been discharged.

Q. Will you please answer my question? I say when that ship got to Cardiff, loaded as she was loaded, the wine could have been taken off?

A. Just exactly as I have said, if the ship was discharged so that you could have worked it.

Q. So that if you had been in charge, you could

(Testimony of William J. Murray.)

have taken that wine out of the ship at Cardiff, couldn't you, loaded just as she was?

A. I would not answer that question, because I don't know just how the stowage was, but I could have discharged the ship.

Q. You could have taken the wine out at Cardiff? A. And reloaded the other cargo.

Q. And you could have made arrangements for that in San Francisco when you started, couldn't you?

A. No, I don't know about that; I don't know about your making arrangements beforehand. What I have in mind was about discharging the ship at Cardiff, if that ship put into Cardiff in distress and had to be discharged for repairs, the cargo could have been discharged and reloaded. That is what I have in mind.

Q. Do you mean to testify, with that stowage plan before you, that it would have been necessary to discharge all of that cargo in order to get the wine off? A. A great deal of it.

Q. Do you mean to testify that it would be necessary to discharge all of it? A. No.

Q. Then that is not the fact, is it?

A. No, because they have [397] wine in the lower holds for other ports.

Q. Couldn't you take out some passage ways to get your wine out, without taking all the cargo off that ship, loaded even as she was?

A. Well, I will tell you: When you start to break stowage, you can cut through a hatch, if

(Testimony of William J. Murray.)

your cargo is such that you can handle it, but it invariably means that the bulk of it has to come out. Now, to take the bulk of that cargo out and take the Cardiff wine out of that ship, you would have that ship topheavy.

Q. That is, when you take it out at Cardiff?

A. Yes, unless you discharge a corresponding amount to guard against that.

Q. When you had the ship at Cardiff, with the wine out of her, you could have made arrangements to take her over to Rotterdam safely, couldn't you?

A. By reloading that cargo back in her that I had to discharge.

Q. And when you got to Rotterdam you could make arrangements, with the Rotterdam cargo out of her, to take her to Hamburg, couldn't you?

A. Yes, by reloading the Hamburg cargo.

Q. You have never made any study of that stowage plan, have you?

A. I never saw it before until it was handed to me here.

Q. And you don't pretend to say how the ship should or should not have been stowed, merely upon a three-minute examination of that stowage plan, do you? You couldn't say that, could you?

A. No, I could not.

Q. And you wouldn't want to say what you would do under those circumstances, would you?

A. Well, I am speaking according to my ex-

(Testimony of William J. Murray.)

perience in the game; I have been years in the business.

Q. But your examination of that stowage plan here has been a mere casual examination of it, has it not?

A. I have just made a casual examination of it, yes. [398]

Q. And you would not load a ship on the mere cursory examination that you have just made of this stowage plan, would you?

A. When we start loading a ship we don't always know what we are going to wind up with; we have not the cargo all on hand that we are going to load, even with the engagement list that you get, for many of them will be cancelled, you will get different ports and different commodities, so you don't know what you are going to get until you get it.

Q. But you have to load your ship with that, notwithstanding? A. Yes.

Q. And that is what you would have to do with this cargo that was destined for Cardiff, Rotterdam and Hamburg, delivered to you in that way?

A. Yes.

Q. And you would have taken it and handled it and discharged it where they told you it was to be discharged, wouldn't you?

A. We would discharge the cargo if they wanted it.

(Testimony of William J. Murray.)

Redirect Examination.

Mr. GRAHAM.—Q. Have you ever loaded wine before? A. Yes, lots of it.

Q. Mr. Mannon has spoken to you about a cursory examination of three minutes or more of this stowage plan. If you knew that a vessel had to load 11,000 barrels of wine for a port of call, one of these 8,800-ton vessels, would you need more than a cursory examination of that stowage plan to show you where that ought to be loaded?

A. Not for a starter.

Q. In other words, you could or could not tell where the 11,000 barrels of wine ought to go?

A. If I got the orders to load that 11,000 barrels of wine, I would go ahead and make my plans accordingly.

Q. Am I correct in this, Mr. Murray— [399]

Mr. MANNON.—Your Honor, this is an expert witness, and I object to any leading question before it is asked. I think the witness ought to make the answer to it himself.

The COURT.—Be careful about that, Mr. Graham.

Mr. GRAHAM.—Yes, your Honor.

Q. From that plan as you see it there, with only the cursory examination, and the knowledge that she was to load 11,000 barrels of wine for Cardiff, what would you say of the possibility or the impossibility of stowing her for Cardiff first discharge, could you do it?

A. If the cargo came first?

(Testimony of William J. Murray.)

Q. No; with your knowledge that she had to put 11,000 barrels of Cardiff cargo in her.

A. To load her to go into Cardiff first?

Q. Could you do that?

A. It could have been done.

Q. What would have been the effect on the seaworthiness of the vessel, or on the other cargo on her, knowing that she had Hamburg general merchandise, and Rotterdam general merchandise?

A. If you have enough cargo in the loading as you progress there to keep that ship stiffened, you could go ahead with loading your full cargo.

Q. Eleven thousand barrels of wine?

A. If you have other cargo to go along to equalize it.

Q. I don't think you understand my question. I am asking you if she would have been seaworthy, or if it would have been proper stowage to have loaded those 11,000 barrels of wine in any other than the place in which it was loaded; would it or would it not be?

Mr. MANNON.—That is not the question the witness has been asked.

Mr. GRAHAM.—I understand that, but I don't think the witness understood the first question that was asked him.

Mr. MANNON.—I think he understood it, and he answered it. [400]

A. Well, when it comes to loading cargo in a ship, there is a limit to it, to be governed in the way it comes to you.

(Testimony of William J. Murray.)

Mr. GRAHAM.—Q. Taking into consideration the amount of wine which this vessel was to load at that time, that is, 11,000 barrels for Cardiff—just that, never mind about bringing it down to the ship—how would you load it properly? The way she was loaded, or some other way?

Mr. MANNON.—That is a leading question.

A. You have to distribute in the ship and get your weights equal; you have to get some of it in each hatch; you have to get the bulk of it in the lower holds. I don't see how you could have got by loading it any different.

Mr. GRAHAM.—Q. Do you think, Mr. Murray, you could have or could not have loaded your ship so that the Hamburg general merchandise and the Rotterdam general merchandise could have gone down below for discharge after Cardiff, with that much wine on board?

A. I would not load her that way.

Mr. GRAHAM.—That is all.

Recross-examination.

Mr. MANNON.—Q. Would it make any difference in your testimony that the ship had about 4,000 barrels of liquor for Rotterdam?

A. I see there is some here; that is only a small amount in comparison.

Q. So that you could have put the Rotterdam wine where the Cardiff wine was, in part; those barrels goods could have been put interchangeably on the ship, could they not?

A. I don't know. You have to assume here

(Testimony of William J. Murray.)

the quantities, apparently, from the spaces written in.

Q. Now, Mr. Murray, we perhaps can get at it in this way: So for as the liquor cargo is concerned, some of which was going to [401] Cardiff and some of which was going to Rotterdam, you could have loaded that vessel so that the liquor cargo could have been taken off at either Cardiff or Rotterdam, couldn't you?

A. And practically discharged the shelter-deck of the ship.

Q. Yes; so that, so far as the liquor on the boat is concerned, the boat could have been discharged either at Rotterdam or at Cardiff?

Mr. GRAHAM.—I object to that, your Honor, I think the witness has already testified on that matter.

The COURT.—I will overrule the objection.

A. If she went into Cardiff to discharge the quantity that is shown here, I figure that she would have to practically discharge the entire shelter-deck of all the Rotterdam and the Hamburg cargo.

Mr. MANNON.—Q. But it is the fact, just in regard to the way the goods were placed on the ship, that the barrels of wine or brandy destined for Rotterdam could have been changed about with the barrels of wine destined for Cardiff, assuming that they were about the same size.

A. No, the proportion of wine for Cardiff is far in excess, as shown on this print here, of the quantity that was going to Hamburg, or to Rotterdam.

(Testimony of William J. Murray.)

Q. What I want to find out from you, Mr. Murray, is this: There are about 4,000 barrels of wine, or brandy on that ship going to Rotterdam, aren't there? A. Yes.

Q. And about 11,000 barrels of wine going to Cardiff? A. Yes.

Q. Those facts are admitted here. You could have taken that 4,000 barrels off, had the ship been so loaded, either at Cardiff or at Rotterdam, couldn't you?

A. Now, you are speaking of the Rotterdam cargo?

Q. If you will just answer the question, Mr. Murray, we will get along faster. I will ask the reporter to read it to you. [402]

(Question read by the reporter.)

A. I don't know what 4,000 barrels you are referring to.

Mr. MANNON.—Your Honor, it will take me some little time to finish with this witness, and as it is now just 12, I suggest we take a recess.

The COURT.—Recess until two o'clock.

(A recess was here taken until two o'clock P. M.) [403]

AFTERNOON SESSION.

WILLIAM J. MURRAY, recross-examination (resumed).

Mr. MANNON.—Mr. Reporter, will you read the last question and answer.

(Record read by the Reporter.)

(Testimony of William J. Murray.)

Q. What I was getting at, Mr. Murray, was that a barrel of wine is the same article, no matter what the port of destination is, that is, whether it is wine for Cardiff, or whether it is wine for Rotterdam, it is wine just the same; that is right, isn't it?

A. Your reference was to the Rotterdam cargo.

Q. Won't you please answer the question that I am asking you; I say that a barrel of wine, whether it is for Cardiff, or whether it is for Rotterdam, is a barrel of wine? A. Yes, certainly it is.

Q. So that on this boat it appears that there were about 4,000 barrels for Rotterdam, and about 11,000 for Cardiff; you had to take that 4,000 barrels of wine off that ship somewhere; the 4,000 barrels could have been taken off at either port, at either Rotterdam or at Cardiff, couldn't they?

A. It could have been so stowed.

Q. And you could have done that, could you, had you been stowing the ship?

A. Now, if I may be permitted to explain to you that as a marine surveyor, where I have the say about the stowage, I first get the list of engagements, the tonnage for the various ports; then you take the cubical capacity of the ship, and from that you familiarize yourself with the plans for stowage What I am driving at is this, in a case of that kind I would know and be better able to say just what I could do than by picking up that stowage plan, and by having some figures before me. [404]

Q. Then, really, unless you had been given a list

(Testimony of William J. Murray.)

of what the cargo was and given something to show you how much space there was on the ship, and something about the cubical contents of the cargo, you could not stow the ship, could you?

A. No, sir.

Q. And you would not know how she ought to be stowed? A. No, sir.

Q. And you have not got that in this case, have you? A. I have not got that.

Mr. MANNON.—If your Honor please, I move to strike out all of the testimony of the witness in regard to the stowage of the ship.

The COURT.—I will deny the motion.

Mr. MANNON.—Q. So that in giving answers to Mr. Graham this morning with regard to stowage, you would feel that those answers were not properly given in view of the facts that you didn't know what the tonnage of the ship was, or what her cubical capacity was?

A. As I tried to explain to you when I was testifying.

Q. You could not tell whether you could load her so you could take the cargo off, or not, unless you had those details?

A. Not according to that stowage plan.

Q. And you could not tell whether you could take the cargo off for Rotterdam if you stowed her yourself?

A. You say if I stowed her myself?

Q. Yes.

A. Oh, there is no question about it, that if I had

(Testimony of William J. Murray.)

the supervision of the loading of the ship and planned it accordingly as desired, I could.

Q. Assuming that the ship was big enough, you could have put the cargo in so that you could have unloaded the Cardiff cargo at Cardiff and the Rotterdam cargo at Rotterdam, and the Hamburg cargo at Hamburg? A. Yes, sir.

Q. So far as you know, and what little you know about this ship, that could have been done?

A. Yes, sir.

Q. You cannot tell from the stowage plan how big the ship was, [405] can you?

A. No, sir, because there are no figures on it to indicate.

Q. And you cannot tell from the stowage plan what the cubical contents of the ship were?

A. Nor of the cargo.

Q. And you have not got the cubical contents of the cargo? A. No, sir.

Q. And you didn't see that stowage plan until this morning, did you?

A. Not until it was handed to me in court this morning.

Q. So you really wouldn't be able to testify about the stowage of the ship and the unloading of the cargo unless you had that data that you have referred to? A. Not from that stowage plan.

Q. You would have to have those figures about the cubical contents? A. I certainly would.

Q. And you would have to have the figures in regard to the cubical contents of the cargo, too?

(Testimony of William J. Murray.)

A. Yes.

Q. That is, when you stow a ship, you take so much material that has a certain volume and a certain weight and put it into a vessel, and the vessel has to have the size, and then you have to balance the vessel so she will steer properly?

A. You have to figure on your weight and your distribution.

Q. And that is something you have been quite familiar with in the past? A. Yes.

Mr. MANNON.—I renew my motion, your Honor. The witness says he, himself, cannot testify in regard to this stowage.

The COURT.—I will deny the motion.

Mr. MANNON.—Q. Now, with regard to the wine that was on this ship for Cardiff, in accordance with the questions asked you this morning, I take it that you cannot tell where you would put that wine in this ship without knowing how big the ship was: Is that right?

A. You want to have those facts before you.

Q. And you would have to know something about the bulk of the [406] wine, too?

A. Well, we know what that is.

Q. And that same thing would be true about the cargo that was on the vessel for Rotterdam, you couldn't tell anything about the stowage or how to stow her unless you knew what this cargo for Rotterdam was?

A. You must have the details of it.

Q. And, likewise, it would be true about the

(Testimony of William J. Murray.)

stowage of the Rotterdam cargo, you would have to have the details? A. Yes, one applies to all.

Q. Then when you had all that detail, you would have to know something about the vessel, how big she was? A. Yes, sir.

Q. And you would have to know something about the interior arrangement of the vessel, wouldn't you? A. The cubical contents.

Q. And you would have to know something about her decks? A. Yes.

Q. You would have to know something about her holds? A. Yes.

Q. You will also have to stow it with reference to the pipes, that is, with reference to heat or cold?

A. That would not make any difference. Do you say pipes?

Q. What I had reference to was the heat, really.

A. Oh, yes, of course all those things have to be taken into consideration.

Q. And you would have to take into consideration whether there was wet cargo, or dry cargo?

A. Exactly.

Q. And you have not got that detail at all, have you? A. No, sir, I have not.

Q. Would the number of hatches on the ship make any difference about the way you would stow her?

A. That would be a contributing factor.

Q. Will you explain to the Court why the hatches would make any difference?

(Testimony of William J. Murray.)

A. Hatches lead to compartments, and it is through these hatches that the cargo is handled.

Q. The hold, itself, is divided into compartments, isn't it?

A. That is what we were speaking of, when we speak of the hold we [407] speak of them as compartments.

Q. I suppose the vessel is loaded, isn't she, through the various hatches and down into the holds?

A. Yes, that is the only way of getting there.

Q. And when you want to unload the cargo, that is, in so far as merely the physical act of taking the cargo out is concerned, whether you may do that thing, or not, would depend on the hatches and the holds wouldn't it? A. Exactly.

Q. Would the bunkers in a ship have anything to do with her stowage, or her seaworthiness, or her stowage in regard to seaworthiness?

A. You mean her bunker hatch?

Q. Yes.

A. Yes, you have to consider that, the same as you would any other compartment.

Q. And you would have to know about that before you could tell how a vessel ought to be fixed up, that is, how she ought to be stowed?

A. Yes, sir.

Q. Do you have storage tanks on the ship, tanks of some sort? A. Storage tanks?

Q. Yes, tanks of any kind.

A. Not for cargo purposes.

(Testimony of William J. Murray.)

Q. No, I don't mean that, I mean in regard to the operation of the ship.

A. You have your deep tanks, in some ships, for fuel oil; that is designated as a tank; you have your double bottoms; they are designated as tanks. You have your fore peak, and you have your after peak.

Q. Would you have to consider whether the ship had double bottoms, or not?

A. You certainly would.

Q. And would you have to consider about these other storage tanks you mentioned, in stowing her?

A. You mean in reference to the deep tank and the double bottoms, and the peaks?

Q. Yes. A. Yes, sir.

Q. In other words, you really have two problems, I take it, in [408] stowing a ship; one is to get your cubical contents of the cargo into your ship; that is one of them; the other is to get your cargo in there so that with reference to the size of the ship, and her own bunkers, and her stores, and one thing and another, she will be seaworthy?

A. Yes, the main thing is as to her stability.

Q. Will you explain to the Court what your duties as a marine surveyor are?

A. Supervision of the stowage for the purpose of giving a certificate that the vessel is in a seaworthy condition when ready to leave port.

Q. And in order to do that, what factors do you give attention to?

A. You give attention to the distribution of

(Testimony of William J. Murray.)

weights, whether it be as cargo, or as fuel in the double bottoms and in the tank, or water ballast, the distribution of the weight of the cargo as a whole, and then the distribution of weight where you are stopping at one port to discharge a portion of the cargo and to proceed to another, at all times keeping in mind the stability and the seaworthiness of the ship.

Q. And those, of course, are the factors that you have not got in regard to this ship, aren't they?

A. I have not got those, no, sir.

Q. Now, I want to call your attention to this stowage plan. This bottom line represents the holds. A. Yes.

Q. What do you call the space that is immediately above the bottom line?

A. The 'tween-decks or shelter-deck.

Q. What is the space above that?

A. Up here is the superstructure.

Q. And this would be the deck of the boat, would it?

A. That would be the weather deck; that is the deck exposed to the weather.

Q. You don't carry lumber on that, do you?

A. Rough lumber or barrel cargo, something of that sort—not a perishable cargo.

Q. When you load the vessel you load her down through the hatches, from what you might call the top deck, or the upper deck, down the shelter-deck and into the holds?

(Testimony of William J. Murray.)

A. Here it is; there is an [409] opening right here; that is the hatchway.

Q. And that is the reason you have to know how many hatches she has in order to load the ship, or know whether you are going to load one or all hatches, is it, because you load down through the hatches: Is that right? A. Yes.

Q. Then, in order to take goods out of the lower holds, you would have to break out this cargo that is in here in the shelter-deck, if it were covered over? A. Yes.

Q. You spoke this morning, in answer to Mr. Graham's questions, with regard to putting wet cargo on top of dry cargo; it is the fact, is it not, that ordinarily you endeavor to have the dry cargo on top and the wet cargo on the bottom, if you can? A. Yes, sir.

Q. And your reason for that is that like here the wine might have leaked out and got down on the dry cargo?

A. Yes, that is exactly the reason. Another feature is that going down through the tropics this portion of the hold is submerged, and you get the benefit of radiation passing through the sea water. Up here it is exposed to heat and sun, both from the top side and on the steel deck; that would have a tendency, with wet goods, with commodities of that kind, of loosening up your cooperage and causing leaks.

Q. And with regard to bean oil, or wine, or brandy, those are all commodities that you give

(Testimony of William J. Murray.)

some attention to the question of temperature in stowing, do you? A. Always.

Q. And it is particularly necessary with regard to dry cargo, to put it where no water will reach it, if you can avoid it? A. You have to avoid it.

Q. And all of these are your problems as a man who stows ships? A. Exactly.

Q. As a marine surveyor you give certificates with regard to the cargo, with regard to the stowage of the ship, do you?

A. I have acted as marine surveyor for consignees of cargo, as well as [410] consignees of the ship.

Q. Can you explain to the Court just what it is that you do? What I want to get at is, what is the use of these documents that you make out?

A. As a surveyor for the ship, I give a certificate that she has been loaded in a seaworthy condition for the safe carriage of dry and unperishable cargo. In the event of damage, I go down there and ascertain the cause, the whys and the wherefores in your opinion, and certify according.

Q. The insurance people are interested in that, too, aren't they? A. Yes, sir.

Q. And the owners of the vessel, the common carriers?

A. Everybody concerned is interested.

Q. You don't do this stowage yourself, Mr. Murray, do you? A. No, sir, I just supervise it.

Q. The stowage is actually done by the ship, is it not, as a matter of practice?

(Testimony of William J. Murray.)

A. The stowage is done by the stevedore employed by the ship.

Q. But it is under the immediate direction of the ship's officers? A. As a rule, yes.

Q. Then you have one or more surveyors down to see that the ship is stowed?

A. If you are employed as a surveyor you visit the ship from time to time, you consult with the men employed there, and advise with them as to what is to go here, and what is to go there, how it is to be stowed, how it is to be dunnaged.

Q. You cannot always get the cargo that you particularly want, on account of the way the cargo is delivered to you, can you?

A. That very often occurs.

Q. And that is one of the problems of the ship's officers, and of the surveyor in regard to the stowage?

A. It is more the concern of the ship's officers and the stevedores.

Q. And that is for the reason that the stevedores make a certificate [411] or inspection of the ship after she is stowed, usually?

A. If they do their duty, they are there periodically during the loading; they are there at the closing, at the windup, in order to see that the hatches are properly covered and battened, and that everything is chopped off and secured. Also to take the vessel's draft, to see that she has not exceeded her allowed draft; also to ascertain that

(Testimony of William J. Murray.)

she has sufficient fuel to carry her to the next port of fueling.

Q. And after you have done that, that is, after a surveyor has done all of that, he gives some written evidence of it?

A. He gives a certificate certifying that the vessel has been loaded under his supervision, giving the particulars as to cargo, draft, fuel oil, or coal, whichever it is she is burning, and that in his opinion the vessel is in a seaworthy condition for the voyage proposed.

Q. And of course, it is his responsibility on that certificate to have known about all the matters that you speak of?

A. His reputation is there, and his record is there; there is no financial responsibility.

Q. There are a certain number of men in any port of any consequence who attend to those matters that you have just described?

A. As marine surveyors, yes.

Q. A certain number of them in San Francisco?

A. Yes.

Q. And, likewise, in each of the other ports?

A. Yes.

Redirect Examination.

Mr. GRAHAM.—Q. Mr. Mannon has asked you about giving your opinion as to the relative stowage of cargo, and the possibility or the impossibility of unloading it if you didn't know anything about the ship. I appreciate that if you didn't know anything about the ship you could not tell

(Testimony of William J. Murray.)

how to stow it. That is reasonable to [412] believe. Now, if I told you that this vessel was one of the Shipping Board vessels engaged in the European-Pacific service, that its name was the "West Aleta," and it had to be loaded on board over 11,000 barrels of wine for discharge at Cardiff, and that the cargo, including this wine, consisted of approximately 2,600 tons for Cardiff and 1,500 tons for Rotterdam, and 660 tons for Hamburg, what would you say as to—

The COURT.—And giving him the capacity of the ship.

Mr. GRAHAM.—I think he knows that, your Honor.

The COURT.—Yes. I think you covered this this morning, Mr. Graham, all that you are trying to bring out now. I am pretty sure you covered it, but you may go ahead, however.

Br. GRAHAM.—Q. (Continuing.) Could you tell me what the possibilities of loading that ship for discharge at Cardiff would be?

Mr. MANNON.—I object to that as immaterial, and as not proper redirect examination, and the matter was covered this morning.

Mr. GRAHAM.—I am trying to bring out the fact that this gentleman cannot testify to a ship he knows nothing about, but that as to a ship that he does know something about I think he can testify to these matters.

The COURT.—I think the matter was covered this morning, but I will allow it.

(Testimony of Ethel Olsen.)

Mr. GRAHAM.—If your Honor is satisfied the matter was covered this morning, I won't go over it again.

The COURT.—I think it was.

Mr. GRAHAM.—That is all, Captain Murray.

TESTIMONY OF ETHEL OLSEN, FOR RESPONDENT.

ETHEL OLSEN, called for the respondent, sworn.

Mr. GRAHAM.—If your Honor please, I have called upon the libelants in these three cases to produce certain documents, but as yet [413] I have received none of the documents. I am now showing Mr. Mannon some copies which I have just gotten out of the file—

Mr. MANNON.—And if your Honor will bear with us for a moment I think that we can save time. I will see if we have them.

The COURT.—Yes, I will.

Mr. GRAHAM.—Q. With whom were you employed in 1919 and in 1920, Miss Olsen?

A. Williams, Dimond & Co.

Q. What position did you have at that time with that company?

A. I was secretary to Mr. Hooper.

Q. What position did Mr. Hooper have?

A. He was general freight agent.

Q. I will show you a copy of a letter which has been put in evidence and will ask you if you have

(Testimony of Ethel Olsen.)

ever seen the original or a copy of that letter before? A. Yes, I have.

Q. Did you write the letter, or not?

A. Yes, I did.

Q. Did you have any hand in conducting negotiations for the booking of freight on the various Shipping Board vessels that Williams-Dimond had or handled at that time, or not?

A. No, I really didn't.

Q. How did you come to write this letter; just explain that to the Court.

A. Sometimes letters would come in, and sometimes the shippers would phone in, in which case Mr. Hooper would say to me, Such and such a firm has made this reservation, you confirm it. Then I would always write a letter. I would answer the letter or the telephone conversation.

Q. That is, confirming a previous telephone conversation? A. Yes.

Q. Do you know with whom telephone conversations were had with the California Wine Association.?

Mr. MANNON.—If your Honor please, I object to that unless it appears that this lady had the telephone conversations.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Did you have any telephone conversations with [414] any officials of the California Wine Association relative to booking cargo on your vessels, or not?

A. Yes, I did, a few times.

(Testimony of Ethel Olsen.)

Q. What is the gentleman's name in the California Wine Association, if you know?

A. Mr. Jenks.

Q. Do you know what his position was over there? A. No, I really don't know.

Q. Did you or did you not inform Mr. Jenks of the routing of these various vessels that Williams-Dimond were handling at that time?

Mr. MANNON.—I object to that, your Honor. The question should ask for the conversation.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Just briefly tell the Court the nature of your conversation with Mr. Jenks at that time?

A. I could not state offhand about any particular shipment, or in connection with the shipment on any particular steamer; if Mr. Jenks would telephone, or anybody else from there, asking about a steamer, I would probably answer him, but I could not relate specifically any conversation I had.

Q. You had a general custom of doing business over the telephone with these various shippers, didn't you? A. Yes.

Mr. MANNON.—I object to the question as leading, your Honor, and, secondly, doing business over the telephone is not a custom.

The COURT.—I will overrule the objection.

Mr. GRAHAM.—Q. Do you remember any telephone conversation that you had with Mr. Jenks, or with these other various shippers relative to their bookings and shipments on the ships?

(Testimony of Ethel Olsen.)

A. Generally, but I couldn't—

Q. What was the general nature of those conversations?

Mr. MANNON.—I object to that, first, as immaterial, and, secondly, that the witness has not completed her other answer. He asked her first if she remembered any particular conversation. [415]

Mr. GRAHAM.—The witness testified it was customary to carry on conversations over the telephone; I am asking her what the customary conversations were.

The COURT.—Objection overruled.

A. Well, if a shipper would phone and ask Mr. Hooper and he was not in, they would very often ask me if we had a certain steamer on the berth for certain ports, in which event I would give them the information that would be at hand. If they asked if we had a steamer for such a port, I would say either "Yes" or "No"; if I said "Yes" I would tell them where the steamer was going, that is, her itinerary; if they said what they wanted to ship, in some cases I could say "Yes," I could make the reservation firm, but in others I would have to take it up with Mr. Hooper, particularly if the steamer was almost full.

Mr. GRAHAM.—Q. Do I understand you to have said that you tell them the route, or wouldn't you tell them the route? A. Yes, I would.

Q. I show you here a copy of a bill of lading of the California Wine Association, from the port of

(Testimony of Ethel Olsen.)

San Francisco to the port of Cardiff; in such a case as that, if a man rang up and said he had 11,000 barrels of wine for shipment to Cardiff, what was your customary conversation with him, what would you say to him, what would you ask him, or what would you do? Would you tell him the route?

Mr. MANNON.—If your Honor please, I don't see how we can possibly be bound by supposititious conversations.

The COURT.—I don't see, either, and I don't see the object of the testimony.

Mr. GRAHAM.—The object of the testimony is merely to show that it was the custom to tell all these shippers, not only the California Wine Association, but practically all of them, or all of them, the routes that these vessels were taking. If your [416] Honor please, five years ago is a long time to remember one definite conversation that Miss Olsen may have had with Mr. Jenks over the telephone. I think she is entitled to testify to general custom, what their method was in carrying on business with the various shippers.

The COURT.—I will permit you to ask her if she would give the itinerary of the ship. The witness has already answered that question, and said it was customary, if I understood the witness correctly, to give the itinerary of the ship inquired about. I will sustain the objection to the last question.

Mr. GRAHAM.—Q. Was it customary to give the itinerary, as the Court has just said?

(Testimony of Ethel Olsen.)

A. Yes, it was.

Q. I show you again this same letter of November 25, and in the same paragraph you will note that it says, "This will also confirm reservation of space for your account covering shipment of 4,000 barrels of wine to be forwarded from here to Rotterdam on the above-named steamer." The steamer was the "West Aleta."

Mr. MANNON.—Is that the letter that is already in evidence as Libelant's Exhibit 12?

Mr. GRAHAM.—Yes. I desire to introduce this letter in evidence, dated December 16, 1919, to the California Wine Association, from Williams, Dimond & Co., relative to the "West Aleta."

Q. Is that your letter, Miss Olsen?

A. That is my letter but not my signature.

Q. You wrote the letter? A. Yes.

Q. Who signed it? A. Mr. Hooper.

Q. Mr. Hooper signed the letter?

A. Yes, it is his signature.

The COURT.—That is already in evidence.

Mr. GRAHAM.—No, not this one, your Honor. The one that was in was the letter of November 25. This is the letter of December 16. I offer it in evidence, and will read it: [417]

RESPONDENT'S EXHIBIT "I."

(Letterhead of Williams, Dimond & Co.)

"San Francisco, December 16th, 1919.

"No. 500-EO.

"California Wine Association,
216 Pine Street,
San Francisco.

"Gentlemen:

"SS. "West Aleta."

"This will confirm reservation of space for your account covering shipment of 2,000 barrels of Wine to be forwarded from here to Rotterdam on the above named steamer, as per our telephone conversation of even date.

"2020 barrels of Wine, previously booked for shipment on this steamer have been transferred for shipment on the SS. 'Cockaponset.' This leaves a total of 4100 barrels of Wine to be forwarded from here to Rotterdam on the SS. 'West Aleta.'

"We are now issuing shipping permits and receiving cargo on Pier 28 for this steamer.

"Thanking you for your kind co-operation, and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.

"Managers & Operators.

"F. A. HOOPER,

"General Freight Agent."

(The letter was marked Respondent's Exhibit "I.")

Q. I show you this letter and ask you if there

(Testimony of Ethel Olsen.)

were any telephone conversations, either by yourself or by Mr. Hooper which you heard, preceding that alteration in the shipment of the 2,000 barrels of wine?

A. I could not say now, I could not relate it; there must have been, or the letter would not have read that way.

Q. You say there must have been; is it my understanding, then that this letter would not have been written without previous conversation?

A. No, it would not.

Q. Can you or can you not say that the letter of November 25, which I have previously shown you, represents your contract to [418] carry, or has any bearing on your contract to carry the 4,000 barrels on the "West Aleta"?

A. This covers two different shipments, one to Cardiff for 10,000 barrels, and 4,000 barrels to Rotterdam.

Q. But does this subsequent letter take the place of the proposed 4,000 barrels for Rotterdam? Is it the same 4,000 barrels, or not?

A. 2,020 barrels of this 4,000.

Q. Of the 4,000 booked on November 25?

A. Yes.

The COURT.—I don't understand clearly what this is all about.

Mr. GRAHAM.—The situation is this, your Honor. Mr. Mannon put in evidence the original letter of November 25, 1919. He also asked the witness Hooper whether or not they had, in fact,

obligated themselves to carry 4,000 barrels to Rotterdam on November 25, and if it was not a fact that their advertisement in "The Guide" began on December 3. I merely want to show to your Honor that if the letter of November 25 ever was a contract, that that was subsequently altered by a later letter on December 16th, showing that this could not have been the contract.

Mr. MANNON.—I think the situation is this, isn't it, Mr. Graham, that, as has been testified, they make the arrangements or negotiations for space and then after that they have what they call firm bookings; those firm bookings they confirm by letter. Afterwards *the* put the goods on board and issue bills of lading. These particular documents that are here, as I understand it, are the space engagements.

Mr. GRAHAM.—Yes, that is substantially it, and that they are not firm contracts in any sense of the word.

Mr. MANNON.—With regard to whether they are firm contracts, or not, we will contend they are, and I suppose opposing counsel will probably contend they are not. At any rate, the part they [419] play is either in making a written contract or a written option for space.

Mr. GRAHAM.—Q. Do you or do you not understand, Miss Olsen, that this is the firm contract, or is the firm contract represented by the bill of lading subsequently entered into?

(Testimony of Ethel Olsen.)

The COURT.—Her opinion on that would be unimportant, I think.

Mr. GRAHAM.—Except that she wrote the letters, your Honor.

A. The California Wine might have made an engagement for 4,000 barrels of wine on this steamer, and then they might have used a portion of that for different ports.

The COURT.—Q. This engagement was for 4,000 on what steamer? A. On the "West Aleta."

Q. And subsequently that was modified?

Mr. GRAHAM.—It was subsequently altered and reduced it to 2,000. Our proposition is that this original letter, which came out before the advertisement in "The Guide," is not a contract, at all, and never was. To show that it was not, here is an alteration—

The COURT.—Even if it were, it was modified by a subsequent arrangement.

Mr. GRAHAM.—Yes, your Honor.

Mr. MANNON.—Those two letters are all we have, Mr. Graham, have you any others?

Mr. GRAHAM.—No, I have not. As a matter of fact, I had great difficulty in locating those two. I called on you to produce the letters.

Mr. MANNON.—Except for those two letters in evidence, we haven't any others.

Mr. GRAHAM.—Now, as to these, I didn't intend to put them in.

Mr. MANNON.—I think it would be better to put them in to complete the file.

(Testimony of Ethel Olsen.)

Mr. GRAHAM.—Q. Are those your letters, Miss Olsen? A. Yes. [420]

Q. Both of them? A. Yes.

Mr. GRAHAM.—I offer in evidence a letter dated December 8th, to Rosenberg Bros. & Co., signed F. A. Hooper, and ask that it be marked Respondent's Exhibit "J."

I offer in evidence a letter addressed to Rosenberg Bros. & Co., dated December 10th, signed F. A. Hooper, and marked Respondent's Exhibit "K."

This letter of December 8th written to Messrs. Rosenberg Bros. & Co., and marked Respondent's Exhibit "J," reads as follows:

RESPONDENT'S EXHIBIT "J."

(Letter-head of Williams, Dimond & Co.)

"San Francisco December 8th, 1919.

"No. 500-EO.

"Messrs. Rosenberg Bros. & Co.,
334 California St.,
San Francisco.

"Attention, Mr. Higgins.

"Gentlemen:

"SS. 'WEST ALETA.'

"Referring to your favor of the 3*th* instant. file HRH,—this will confirm reservation of space for your account covering shipment of 500 tons of Rice or Beans to be forwarded from here to Hamburg on the above named steamer.

"We will advise you in due course as to when we

will commence issuing shipping permits and receiving cargo for this steamer.

"Thanking you for this business, and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.

"Managers & Operators.

"F. J. HOOPER, O.,

"General Freight Agent."

(The letter was marked Respondent's Exhibit "J.")

(The letter which was marked Respendent's Exhibit "K" reads as follows:)

RESPONDENT'S EXHIBIT "K."

(Letter-head of Williams, Dimond & Co.)

"San Francisco December 10th, 1919.

"No. 500–EO. [421]

"Messrs. Rosenberg Bros. & Co.,
334 California St.,
San Francisco.

"Gentlemen:

"SS. 'WEST ALETA.'

"This will confirm reservation of space for your account covering shipment of 250 tons of Rice and Beans to be forwarded from here to Hamburg on the above named steamer.

"We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

(Testimony of Ethel Olsen.)

"Thanking you for this business, and awaiting your further pleasure, we remain

"Yours faithfully,

"WILLIAMS, DIMOND & CO.

"Managers & Operators.

"F. A. HOOPER,

"General Freight Agent."

At this time I will ask you, Mr. Mannon, if you have any letters written to Rosenberg Bros. covering the Rotterdam cargo?

Mr. MANNON.—I don't think we have, but I will see in a moment; no, we have not.

Mr. GRAHAM.—Q. Do you know, Miss Olsen, whether any corresponding letters were written covering Rotterdam cargo shipped for Rosenberg Bros.? A. I think there must have been.

Q. From your answer and from this letter, it would show that Rosenberg Bros. knew that the vessel was going to Hamburg and Rotterdam; do you recall any conversation had with Mr. Higgins, or with anybody in Rosenberg Bros. relative to which one of these two ports would be called at first, or as to the route the vessel was going?

A. I am afraid I could not answer that definitely.

Q. You could not say whether you did or not?

A. No.

Q. Do you remember what your general custom as to notifying Rosenberg Bros. was at that time?

Mr. MANNON.—We object to that on the ground that it is immaterial. It is not possible to prove

(Testimony of Ethel Olsen.)

what her general custom was [422] by a particular telephone conversation.

Mr. GRAHAM.—I am merely trying to show the method of transacting business with Rosenberg Bros.

The COURT.—You have shown what the custom of the office was, but not with any particular customer. I will overrule the objection.

A. If we put a steamer on the berth the principal shippers were always telephoned to before circulars were sent out, advising them of the prospective steamer, and they were always told definitely what the itinerary of the boat would be; they were told that in connection with every reservation they would make on that steamer.

Mr. GRAHAM.—Q. In that class of large customers which you have named, would you or would you not name the California Wine Association, Rosenberg Bros., and S. L. Jones?

A. Those were three of our largest shippers.

Cross-examination.

Mr. MANNON.—Q. Miss Olsen, this European-Pacific Line, co-called was originally advertised on June 6, 1919, wasn't it?

The COURT.—Just let me ask a question.

Q. You mean, then, that because that was your custom you are satisfied that in this instance you notified Rosenberg Bros. & Co.?

A. Yes, all our shippers were notified as to the itinerary of our steamers.

(Testimony of Ethel Olsen.)

The COURT.—Now, Mr. Mannon, you may proceed.

Mr. MANNON.—Mr. Reporter, will you read the question?

(Question read by the Reporter.)

A. About.

Q. About that time?

A. About that time. I don't know the date, exactly.

Q. That is correct, as nearly as you can recollect?

A. Yes, sir.

Q. You were working with Mr. Hooper, were you? A. Yes.

Q. When did you go to work with him, if you remember? [423]

A. The latter part of 1915.

Q. And then did you work with him right along after that time? A. Yes.

Q. You are not employed by Mr. Hooper now, are you? A. Not since he went south.

Q. Your residence is in San Francisco?

A. Yes.

Q. I take it that you cannot remember now any of these conversations particularly?

A. Not in connection with any particular shipment.

Q. That is to say, it has been a matter of four or five years ago, and you have had a great many telephone communications? A. Yes.

Q. And among the people you dealt with were Mr.

(Testimony of Ethel Olsen.)

Higgins, of Rosenbergs, and Mr. Jenks of the California Wine? A. Yes.

Q. With regard to the itinerary which you may or may not have given out, I suppose you cannot now recall what the itinerary was, can you?

A. No, not as to any particular boat. I used to keep a memoradum on my desk as to each steamer en route, and the steamers on berths, and steamers to be put on berth. If I had a telephone conversation with any shipper, that was read right off to him. No port was spoken of. If they wanted to make a reservation about a certain port, we made it, but if they asked where the steamer was going, we always read it right off. That was the same itinerary that appeared in "The Guide."

Q. That itinerary was changed from time to time, wasn't it? A. Not on any steamer.

Q. I wanted to ask you first what you meant by when the boat was on the berth.

A. Sometimes we would be told by the Shipping Board that it would give us a steamer at a certain time to put on for European ports. We put that particular steamer on for the port where cargo was offering for. Then if it was definitely decided, and the steamer named, we would call that putting that boat on berth. [424]

Q. The first of these Shipping Board vessels that went into the European-Pacific Line went out of San Francisco in the month of August, 1919, didn't it? A. I should think about that time.

Q. That is about right, isn't it? A. Yes, sir.

(Testimony of Ethel Olsen.)

Q. Then you had one or two along in August, but then you didn't get well started until December, did you?

A. I could not answer that definitely. We had quite a few before we had a regular service, I know.

Q. With regard to the "West Aleta," do you remember where she went on her first trip?

A. No, I couldn't say.

Q. Do you remember where she was first intended for, according to this memorandum of yours, on her second trip out?

A. No, I could not answer that.

Q. I think she was lost on the second trip, is that your understanding?

A. Yes, she was; I think it was the second trip we handled her.

Q. As a matter of fact I think it was her second trip. I think she was launched just before her first trip. Is it not a fact, if I may refresh your recollection with regard to this second trip that she made out, that she was first intended for Cardiff and Rotterdam, and not for Hamburg at all?

A. I couldn't answer that.

Q. So that you don't know whether that is or is not true? A. No, I could not say.

Q. Your attention has been called here to two letters from you, or from Mr. Hooper, to Rosenberg & Co., confirming a reservation for 500 tons and for 250 tons for Hamburg; one is dated December 8, 1919, and the other one December 10. I want to ask you if the securing of that cargo for

(Testimony of Ethel Olsen.)

Hamburg was not the reason you changed the ship so that she could go to Hamburg?

A. I could not answer that, I don't know.

Q. That may have been the situation?

A. It may have been, or it [425] may not have been. It was very customary for them to change their reservations that way, not alone on the "West Aleta," but on all steamers.

Q. And when the change was made that had something to do with where the ship was going, that is, I mean when the change in the cargo was made? A. Not necessarily.

Q. Perhaps you are not familiar with these matters; I understood that the ship corrected her itinerary to places where she could get cargo, either home-bound or outbound: Do you know about that?

A. I could not answer that. I know they have made changes that were not for that reason.

Q. Speaking of the custom you had of doing business, you referred to some custom; that so-called custom could not have lasted any longer than the European-Pacific Line, in regard to that line, could it? A. No, it could not.

Q. So that if the line did not commence until some time about June, 1919, this custom or usage you refer to could not have lasted more than a few months; that is right, isn't it?

A. That lasted during the time we handled Shipping Board boats, and still lasts now.

Q. Are you still with Williams, Dimond & Co.?

A. No, I am with the American Hawaiian, but it

(Testimony of Ethel Olsen.)

is the same service. All bookings put out of Mr. Hooper's office were done in exactly the same manner. We were always very careful, particularly in the European trade, to tell the people where the various boats were going.

Q. And you had various ways of telling them?

A. Yes.

Q. One was by telephone service? A. Yes.

Q. Another was by advertising in the papers?

A. Yes.

Q. What papers were they?

A. We advertised in all the papers, but the only paper where we were very careful of the itinerary being in there was in "The Guide." [426]

Q. And another way you had was to send out circular letters?

A. Yes, we did on some steamers.

Redirect Examination.

Mr. GRAHAM.—Q. Mr. Mannon has spoken to you about "The Guide." I show you a copy of the advertisement in "The Guide" a day or so before the "West Aleta" sailed. You will note that it indicates Hamburg, Rotterdam, Cardiff; do you remember whether or not that is the notice you had upon your desk which you spoke about?

A. Yes.

Q. You do know that that is the notice which you informed the shippers about? A. Yes.

Recross-examination.

Mr. MANNON.—Q. You said that you were very careful about "The Guide"; you mean that you

(Testimony of Ethel Olsen.)

were careful about the advertisements you placed in "The Guide," so that they would give the itinerary of the ships? A. Yes.

Q. Those advertisements, however, were changed from time to time after the vessel was placed on the berth and before she sailed, weren't they?

A. If by any mishap or anything it was advertised incorrectly it would have been changed, and notice would have been given immediately.

Q. The reason I ask the question is that I have examined "The Guide" in many of these particulars; is it not a fact that the advertisement in "The Guide" from day to day showed various changes?

A. I should not think so, as to any particular boat.

Q. Is it not a fact also that the advertisements in "The Guide" do not accord with the places where the vessels went, in very many instances? Do you know anything about that?

A. Not with our steamers.

Mr. GRAHAM.—Q. If the advertisements in "The Guide" did not accord with the route the vessel took, and you had previously booked cargo, what would you do to notify the shippers, or would [427] you notify them?

A. I don't think we would have notified them, because we would have corrected the advertisement; most letters that we wrote, and I think some went to the California Wine Association and to Rosenberg, would give the itinerary of the boat in the confirmation of the space.

Q. You had a practice of doing that? A. Yes.

(Testimony of Ethel Olsen.)

Mr. MANNON.—We expect to introduce "The Guide" to show the various changes, and, therefore, I won't go over it with this witness. You will make no objection to the authenticity of the file of "The Guide" that we have here, Mr. Graham, will you?

Mr. GRAHAM.—No.

Mr. MANNON.—That is all with this witness.

Mr. GRAHAM.—If your Honor please, that concludes our case so far as the witnesses are concerned. I would like to read to your Honor at this time the answers to the interrogatories which were propounded to the various libelants in these cases. First I will read the interrogatories. They are, in their nature, the same in all of the libels.

The first interrogatory was: "Was any insurance carried upon the cargo?"

The second was: "If so, attach a copy."

The third was: "Has any insurance been paid on account of the loss or damage; if so, how much, and to whom were such payments made?"

The next one is: "Has any loan been made on account of the loss or damage; and if so, to whom have such loans been made?"

The answers are substantially the same in all of them.

"Yes, insurance was carried upon said cargo."

"The said insurance was carried by policies," giving the number, [428] stating the insurance company which carried the particular policy, and permitting the respondent to examine the original policies whenever it saw fit.

The answer to the third interrogatory is, "Yes, payment *have* been made on these policies."

The answer to the fourth interrogatory gives the total amount of payments made.

It is set forth in the stipulation of facts that the agreed values of this cargo at the time and place when it would have been delivered had the vessel not been lost, are certain sums, and those sums correspond exactly with the sums of money named in the answers to the interrogatories as the amounts of money which have been paid to the various libelants. It leaves the situation where the libelants here have received, under their insurance policies, full payment for their damage; that payment in each case has been made, not on loan receipts which are customary in a great many cases where there is any question of the liability of the insurance company, but these payments were made on full payment receipts.

If your Honor will bear with me, I will read what I deem to be pertinent points in the receipt or check which was made payable to the California Wine Association by the Fireman's Fund Insurance Company and the amounts as set out in the interrogatories.

Mr. MANNON.—That matter has been entirely covered. The libelants were fully insured in each instance, and have been paid in accordance with the damages here claimed.

Mr. GRAHAM.—I would like to put these policies, or the copies of the policies, in evidence, and also the checks under which the payments were

made, showing that there is no damage here to these libelants at all.

In the case of the California Wine Association the payment [429] was made by the Fireman's Fund Insurance Co. on June 2, 1920, in the sum of $642,871, and that the libel was brought by the California Wine Association against the Emergency Fleet Corporation in October, 1922, more than two years afterwards. May I be permitted to read this check?

The COURT.—You may read it.

Mr. GRAHAM.—(Reading:) "Pay to the order of California Wine Association Six Hundred Forty-two Thousand, Eight Hundred Seventy-one ($642,-871.00) Dollars, being in full settlement and satisfaction of all claims against said company for loss and damage by the steamship 'West Aleta' on the 12th day of February, 1920, under policy 641422."

In that respect, I offer in evidence as Respondent's Exhibit "L," a photostat copy of the original insurance policy covering the shipment of wine to Rotterdam and to Cardiff by the California Wine Association.

Mr. MANNON.—We object to that as immaterial. What possible basis can there be for putting in evidence here the insurance policies? We admit we were fully insured. The Shipping Board was likewise insured.

The COURT.—In view of that admission, I think you are unnecessarily encumbering the record.

We are entitled to have the policy to show what is on its face. This policy only covers the shipment

of wine to Cardiff and to Rotterdam; there were other shipments of wine on the manifest.

Mr. MANNON.—We make the same objection.

The COURT.—Objection overruled.

Mr. GRAHAM.—We introduce in evidence the check from the Fireman's Fund Insurance Co. as Respondent's Exhibit M. [430]

In the same respect, I offer in evidence the certificate of insurance, the open policies, carried by the firm of Rosenberg Bros. & Co. with the Fireman's Fund Insurance Co., together with the checks representing the payments made by the insurance companies in full settlement of their claims, as Respondent's Exhibit "N."

In the same respect—

Mr. MANNON.—It will be understood, your Honor, we have objected to all of these.

The COURT.—I will sustain the objection to all these policies; none of them will go in.

Mr. LILLICK.—Your Honor sustains the objection?

The COURT.—Yes, in view of the admission of counsel.

Mr. LILLICK.—May I address your Honor for a moment on that question?

The COURT.—Yes.

Mr. LILLICK.—The admission made by counsel for the other side does not go to the point which we are seeking to make, that when the insurance was taken out the insured knew that the vessel was going to these two ports, and in the order named in the policies, Rotterdam, Cardiff, which is the contention we are making in respect to notice.

The COURT.—If that is material, you can cover it by stipulation.

Mr. MANNON.—You can just read that portion of it.

The COURT.—In view of the stipulation, it is clear that these are immaterial.

Mr. GRAHAM.—The stipulation only covers the point that payments were made. I wanted to call attention to the fact that these were full payment certificates, and not loans.

Mr. MANNON.—We admit that. [431]

Mr. LILLICK.—That is stipulated to, is it?

Mr. MANNON.—Yes.

Mr. LILLICK.—Will you read into the record that portion of the policy as a part of your stipulaton?

Mr. MANNON.—It is stipulated that the policy reads, in part as follows:

"The FIREMAN'S FUND INSURANCE COMPANY in consideration of Eight Thousand Thirty Five and 90/100 . . . . Dollars premium, at and after the rate of Three Fourths & One Half . . . . per cent, and subject to the Conditions and Warranties specified herein and/or attached hereto, does by this Policy insure CALIFORNIA WINE ASSOCIATION as well in his or their own name as in that of those to whomsoever the subject matter of this Policy does or shall appertain, in the sum of Six Hundred Forty Two Thousand Eight Hundred Seventy One Dollars.

upon liquor, being:—

$456,955.—on 11,000 Barrels of Wine to Cardiff,

$120,493.—on 1,108 Barrels Brandy and 1250 Barrels Wine, to Rotterdam.

$ 65,423.— on 1742 Barrels Wine, to Rotterdam, marked:—Geneva.

Valued at sums insured

laden (under deck) on board the ship or vessel called the SS 'WEST ALETA' (lost or not lost) at and from Point San Pablo and San Francisco via Panama Canal to Rotterdam and Cardiff."

I also want to read this clause:

"Held covered, at a premium to be arranged, in case of deviation or change of voyage or of any omission or error in the description of the interest, vessel, or voyage."

Mr. GRAHAM.—Have you read the policies covering the shipment to Hamburg? [432]

Mr. MANNON.—I don't think we have any policies that run to Hamburg, Mr. Graham.

Mr. GRAHAM.—I notice it was intended to cover to Hamburg.

Mr. MANNON.—There were five barrels of liquor that went to Hamburg, but I didn't see any policies on that.

M. GRAHAM.—So they were not covered on this?

Mr. MANNON.—No.

Mr. GRAHAM.—That is all.

Mr. MANNON.—We want the record to show that we have asked opposing counsel for documents which show, if there be such documents, that the ship "West Aleta" was insured against perils and losses caused by deviation, insured in the American Club. We will ask counsel to produce the documents

showing that she was so entered, the purpose being to show that the "West Aleta" appreciated that she might deviate, and took out insurance protection against the deviation.

Mr. GRAHAM.—If your Honor please, if there are any such records in existence, we have no knowledge of them. It may be a fact that the "West Aleta" was insured in the Club at the time she was lost against deviation. I don't know anything about it at all. I will have to look up the record. It is a fact, however, that in this particular instance that if the Court holds the "West Aleta" liable for deviation and subsequent loss, the payment of that loss will come out of the funds of the Emergency Fleet Corporation. Whether or not it was insured at that time, I do not know.

Mr. MANNON.—We would ask counsel to ascertain, and either produce the papers, or give the stipulation. We understand it to be the fact that she was entered in the American Club, and insured against this particular class of liability.

I take it, if your Honor please, that at this time you would [433] not care to hear argument on a motion for nonsuit, or a dismissal. I withdraw that suggestion for a moment. I was going to ask for judgment on the evidence as the case has been so far made, because there has been no competent evidence introduced to vary the written contract contained in the bill of lading. I take it your Honor does not care to hear argument on that motion?

The COURT.—You submit the motion, do you?

Mr. MANNON.—Yes, your Honor.

The COURT.—Motion denied.

Mr. MANNON.—If your Honor please, it has been testified here that there were certain voyages made by this ship. Mr. Hooper has given all of the voyages. Then we heard testimony for three or four days that these voyages were advertised in "The Guide." The defense has been predicated upon the advertisement in "The Guide." We now desire to offer the evidence from the "The Guide," itself, showing that the voyages as testified to by Mr. Hooper do not accord with the voyages as advertised in "The Guide." It will take some little time to go through this file. It will be necessary to identify this file.

Mr. LILLICK.—We will stipulate that the copies that you are here producing are copies of "The Guide." I think we might simplify the record by that stipulation going still further, and you and I can read it into the record, if you care to do it, that on such and such a day, giving it, a steamer was advertised in "The Guide" of that issue to proceed to and touch at certain ports as mentioned here.

Mr. MANNON.—I think that is an excellent suggestion, your Honor, but in view of the fact that the Court has heard the other evidence, I would want the Court to hear this evidence.

Mr. LILLICK.—I have no desire at all to cut you short, Mr. Mannon, but it seems to me that you can read it and in that way [434] have it in much simpler form.

Mr. MANNON.—Your Honor, it will take some time to go through this file. I believe we can save a great deal of time if we can get together and from this file make up a tabulation and present it here.

The COURT.—Yes, I think so. The case will stand over now until Monday, January 5, 1925, at ten o'clock A. M.

(An adjournment was here taken until Monday, January 5, 1925, at ten o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [435]

Tuesday, January 6, 1925.

Mr. MANNON.—If your Honor please, after the last recess counsel examined the file of "The Guide" together, and we are now able to stipulate that the fiirst advertisement of this European-Pacific Line here in the "The Guide" was under date of June 7, 1919. We have prepared and I will offer in evidence this list of advertisements in "The Guide," showing the advertisement of nine vessels, being all of the vessels of the European-Pacific Line there advertised prior to the time the "West Aleta" sailed. I ask that that be marked Libelant's Exhibit the next in order.

(The document was here marked Libelant's Exhibit 18.)

It may be of interest to the Court to know the materiality of this list. We have been taking some evidence here in regard to advertising custom. This list shows that of the nine vessels that sailed before the "West Aleta" sailed, six of them did not go as advertised in "The Guide," and three

of them did go as advertised in "The Guide" finally. We are offering this in evidence in connection with the evidence regarding custom and usage.

I want to put in merely two copies of the advertisement. The first one that I will offer appeared in "The Guide" as of June 23, 1919. I will offer that in evidence and ask that it be marked Libelant's Exhibit 19. I offer this merely to show the form of the advertisement.

Mr. GRAHAM.—That is offered in connection with the other exhibit to show changes from the actual advertised route?

Mr. MANNON.—Yes. The first one is dated June 23, 1919; the next one is the advertisement from "The Guide" under date of July 17, 1919.

(The documents were here marked, respectively, Libelant's [436] Exhibits 19 and 20.)

I think the Court fully understands our position that parol evidence is not admissible to prove any custom, or to prove any knowledge which in anywise affects the bills of lading. I would like it understood that in introducing the evidence that I am introducing in rebuttal, I am doing so merely because it is rebuttal, and not because we consider it relevant evidence otherwise.

The COURT.—Yes, I think that is fully understood.

TESTIMONY OF J. S. JENKS, FOR LIBELANT (IN REBUTTAL).

J. S. JENKS, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. Mr. Jenks, your name is J. S. Jenks? A. J. S. Jenks.

Q. What is your occupation?

A. At the present time I am general western agent of the Belt Railway Co. in Chicago.

Q. What was your occupation in 1919 and 1920?

A. I was manager of the California Dispatch Line, a tank-car company belonging entirely to the California Wine Association.

Q. And in that capacity what, if anything, did you have to do with the space engagements and the traffic business of the California Wine Association?

A. I was ex-officio manager of the California Wine Association's traffic.

Q. What, if anything, did you have to do with shipments of wine, and brandy to Cardiff and to Rotterdam, which were shipped on the "West Aleta," at the time when she was wrecked?

A. I secured the space.

Q. What did you have to do with five barrels of wine and brandy which were on the "West Aleta" destined for Hamburg when she was wrecked? A. Nothing. [437]

Q. With whom were your negotiations carried on?

(Testimony of J. S. Jenks.)

A. With Mr. Hooper, of Williams, Dimond & Co.

Q. That was the Mr. Hooper who had to do with the European-Pacific Line? A. Yes, sir.

Q. What conversation, if any, did you have with Mr. Hooper concerning the order of the ports of call of the "West Aleta" on this voyage?

A. None.

Q. What conversation, if any, did you have with Mr. Hooper concerning the vessel going to Hamburg, or going to Cardiff, or to Rotterdam?

A. None.

Q. When did you first learn that the vessel was intended or was destined to Hamburg before going to either Cardiff or Rotterdam?

A. When she was wrecked.

Q. I wanted to find out what experience you had had in the traffic business, Mr. Jenks.

A. I entered the Southern Pacific Co. in the year 1886, down at the local freight office, in San Francisco; later on I went to the San Francisco and San Joaquin Valley R. R.; then into the general freight department of the Southern Pacific; later I became traffic manager of the California Fruit Canners Association. Then I was away for a whole year, and came back here and acted as traffic manager for various firms, until 1915, when I was appointed manager of the California Dispatch Line.

Q. So that all of your business career has had to do with traffic? A. Traffic, yes.

(Testimony of J. S. Jenks.)

Q. With regard to ocean traffic, are you able to state what is considered as constituting the contract for the carriage of goods?

A. The bill of lading.

Q. And what is the last document that is executed between the shipper and the common carrier? A. The bill of lading.

Q. We have had some testimony here concerning custom; it appears [438] here that the forms of bill of lading that were used included this language, this being the so-called deviation clause or liberty-to-call clause: "And to touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports more than once."

Will you state whether there is any custom, to your knowledge, in the port of San Francisco or anywhere else, about what those words mean?

A. They mean whatever has been interpreted by the law.

Q. Do you know of any custom of interpreting that clause in connection with advertisements?

A. I certainly do not.

Q. Do you know of any custom of interpreting bills of lading in connection with advertisements?

A. No.

Q. So far as you have observed, what reliance, if any, is placed upon advertisements as a part of the contract of carriage of goods by sea out of the port of San Francisco, or out of any other port, to your knowledge? A. None at all.

(Testimony of J. S. Jenks.)

Q. There has been some testimony here about the meaning of the word "via" in connection with bills of lading. I note in this bill of lading, in paragraph 19, it reads: "Also in case the shipment hereunder is made from any port on the Pacific Coast to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal, or Straits of Magellan, or Cape Horn, or as heretofore set forth, to transship." What does the word "via" mean there, so far as you know, in connection with traffic via Panama Canal? A. "Via" means the route.

Q. Does that mean transshipment, so far as you know, at the Panama Canal?

A. Transshipment, no.

Q. There has been some testimony here that the use of the word "via" means transshipment point; you say it does not mean that? [439]

A. No, it does not.

The COURT.—Q. You mean it is not regarded in the shipping business as meaning "transshipment"? A. No, it is not.

Mr. MANNON.—Q. With regard to the engagement of space for ocean shipments, will you state to the Court, very briefly, what the usual method of doing that, so far as your practice is concerned, is?

A. At that particular time we had to find steamers to transship a large quantity of wine to Cardiff, or Swansea, and also to Rotterdam, and I was asked to find vessels that would be willing

(Testimony of J. S. Jenks.)

to take the cargo. After negotiations with several different steamship agents, Williams, Dimond & Co. said they would have the "West Aleta" on the berth, and would accept this quantity of wine for Cardiff—wine and brandy, I don't know the exact proportions—for Cardiff and Rotterdam. So we made the engagement for that steamer for the quantity specified in the confirmation.

Q. Those various negotiations, I take it, were oral?

A. Oral, or by telephone; mostly by visits.

The COURT.—Q. Had you seen the advertisement in "The Guide"?

A. The advertisement, to my memory, was not inserted until—until after we had made a space engagement for Cardiff, or Swansea, because, as I recall the transactions and general business of shipping from San Francisco, Cardiff is not a usual port of call for vessels going to the United Kingdom. So we offered the cargo for Cardiff and that enabled them to advertise the space for Cardiff; that is my memory of it.

Mr. MANNON.—Q. I call your attention to Libelant's Exhibit No. 12, a letter, which is dated November 25, 1919, and ask you if you recognize that letter as something that passed through your hands? A. Yes. [440]

Q. State to the Court what it is.

A. It confirms a reservation for 10,000 barrels of wine from San Francisco Bay to Cardiff on the "West Aleta."

(Testimony of J. S. Jenks.)

Q. That has to do with the very reservation that you mentioned?

A. The very reservation that I made. Also 4,000 barrels to be forwarded from San Francisco Bay to Rotterdam on the same steamer. There were some changes made in the space afterwards for both points, but that is not material.

Q. I show you this letter of December 16, 1919, being Respondent's Exhibit "I," addressed to the California Wine Association by Williams, Dimond & Co., and ask you if you recognize that document? A. I do.

Q. State to the Court the part that played in this transaction?

A. This confirms space for 2,000 barrels of wine to be forwarded from San Francisco Bay to Rotterdam on the "West Aleta" as per telephone conversation.

The COURT.—Q. Two thousand barrels for Rotterdam? A. For Rotterdam.

Q. Was there that much shipped on the "West Aleta"? A. Yes, there was.

Q. To Rotterdam?

A. To Rotterdam. There were 2,000 barrels of wine previously booked on the steamer which had been transferred for transshipment on the steamer "Cockaponset"; this leaves a total of 4,100 barrels to be forwarded from San Francisco Bay to Rotterdam on the "West Aleta."

Mr. MANNON.—Q. As far as your recollection serves you, are there any other space engage-

(Testimony of J. S. Jenks.)

ments on the "West Aleta" by the California Wine Association for Cardiff or for Rotterdam, than those?

A. That is all that I know of, those two ports.

Cross-examination.

Mr. GRAHAM.—Q. You state you didn't have anything to do with [441] any shipment of wine to Hamburg; who did handle that, if you know?

A. That was, in all probability, handled by the Shipping Department. It was not handled through my office, as far as I can remember. It being a very small shipment, the Shipping Department may have handled it after knowing that the boat expected at some time or other to go to Hamburg, and asked them if they could accept a shipment of five barrels.

Q. Did you have two departments?

A. We had a traffic department and we had a shipping department. The Shipping Department attended to the details, and I attended to securing the necessary space.

Q. So you did not handle all of it?

A. I booked the space for these large shipments. The Hamburg matter I didn't have anything to do with, so far as I know; I am quite sure I did not.

Q. Who was Mr. Barricks?

A. He was the shipping clerk.

Q. He was not in your department? A. No.

(Testimony of J. S. Jenks.)

Q. He had nothing at all to do with your department? A. No.

Q. Who was his superior, if you know?

A. Every department of every large concern works more or less together; he took his instructions, in acting as shipping clerk, from the general manager, Mr. Morrow.

Q. Am I correct in understanding you to say you did not have any conversations with Mr. Hooper relative to the routing of this vessel?

A. None at all.

Q. You knew she was going to more ports than to Cardiff, didn't you?

A. I naturally assumed that, yes, because we had already made space on her for Rotterdam, when we found that she was going to Rotterdam.

Q. So you doubtless knew she was going to Rotterdam and to Cardiff; did you know that she was going to any other ports?

A. No, I did not. [442]

Q. Did you know that this vessel was engaged in the general European-Pacific service by Williams, Dimond & Co. at that time?

A. Well, I knew that she might have been engaged as part of what Williams, Dimond & Co. were starting as a European-Pacific Coast ports steamer line, but it didn't make any impression on me at the time, because I was concerned in getting the cargo to Cardiff, or Swansea, and to Rotterdam.

Q. Weren't you concerned in getting the cargo

(Testimony of J. S. Jenks.)

out of the United States, rather than getting it to any one port in Europe?

A. No, it was to Cardiff; the agents of the company in London found that Cardiff or Swansea were the only places that could handle such a large shipment as we did make on all the different boats, and asked us if the steamers would take the cargo for Cardiff.

Q. So you were just shipping to Cardiff or Swansea at that time? A. That is all.

Q. How about later on?

A. I have an idea that the last boat that was allowed to leave this port had to be out of San Francisco the day before prohibition became effective.

Q. When was that, if you know.

A. I fancy it was some time in January, 1920, although I am not sure.

Q. Do you remember the "Xenia"?

A. Yes, we loaded here.

Q. How much did you put on her?

A. I don't remember.

Q. You don't remember what it was? A. No.

Q. Do you know where she went?

A. I don't remember what the bill of lading said.

Q. You don't remember where she was to go?

A. No.

Q. Before the time of this letter of November 25, before that letter was written I suppose, of course, you had some negotiations with Mr. Hooper relative to this booking, had you not? [443]

(Testimony of J. S. Jenks.)

A. Oh, yes, I had conversations with several agents of the different steamers.

Q. And among them was Mr. Hooper?

A. And among them was Mr. Hooper.

Q. Do you remember what the nature of that conversation was? Did he come and tell you that he had a ship on the berth for Cardiff?

A. No, sir; I went to him and asked him if he could take freight for Cardiff.

Q. You went and asked him? A. Yes.

Q. How did you happen to pick on Williams, Dimond & Co.?

A. Mr. Hooper was a good friend of mine, and I knew they had vessels loading for various ports, the same as Evans had, and that Balfour-Guthrie had.

Q. Did you have some dealings with Balfour-Guthrie?

A. We had dealings with Balfour-Guthrie in connection with a boat that left here to take freight to Cardiff. We had to get over 40,000 barrels out, and we had to scurry around to find vessels that would take it.

Q. So your concern was getting wine out before prohibition became effective? A. Yes.

Q. And it was concerned to get it on any boat that would take the goods for you to Europe?

A. To take them to Cardiff.

Q. All your goods went to Cardiff?

A. To Cardiff or Swansea.

Q. And no place else? A. Not in England.

(Testimony of J. S. Jenks.)

Q. How about Continental ports?

A. We had 4,000 barrels on this boat for Rotterdam. Whether we had any more on any other boats or not, I don't remember.

Q. You don't remember any other boat?

A. No.

Q. This letter of November 25, do you remember having any conversations with Mr. Hooper before that letter was written?

A. I probably did have. The letter could not have come out of a [444] clear sky. It says, "This concerns reservations," so I must have had conversation with him about it.

Q. So this letter is really the culmination of your previous conversations? A. Yes.

Q. Most of your business was over the phone, was it? A. No, probably it was by calling.

Q. Either he on you, or you on him?

A. Yes.

Q. Would you positively state that Mr. Hooper had not told you the route the "West Aleta" was going to take at any time?

A. If he mentioned the various ports the vessel was going to take, it made no impression on my mind that that was the order of the ports of call.

Q. So you cannot positively say that Mr. Hooper did not tell you that the "West Aleta" was going here or there?

A. I can positively say that he never used the expression that the vessel would make the ports in the order of ports of call.

(Testimony of J. S. Jenks.)

Q. He did not mention the order of ports of call at all? A. No.

Q. Did he mention that the vessel was going to Hamburg, Rotterdam, Cardiff?

A. He might have, but in what order I cannot say.

Q. You would not say that?

A. I would not say that he did not say those ports, but I can say positively he did not say it as the order of ports of call.

Q. So you didn't know before the vessel sailed that she was going to Hamburg, Rotterdam and Cardiff in that order? A. I didn't know that.

Q. Did you take "The Guide" at that time?

A. Yes, we took "The Guide."

Q. Did you use it at that time?

A. I paid no attention to "The Guide" at all.

Q. You didn't follow it at all?

A. No, I didn't follow it at all. [445]

Q. Was it in your office? A. No, it was not.

Q. It was not in your office, at all?

A. No, it was not in my own office; it was in the office of the company.

Q. I mean your own office. So you don't know the purpose for which it was taken?

A. Everybody took "The Guide" for the purposes of all kinds of shipping.

Q. Shipping information?

A. Shipping information.

Q. In general, giving routes and ranges of service, and the names of ships?

(Testimony of J. S. Jenks.)

A. It was generally referred to, particularly by the shipping department, to know what day a boat was going to sail, and the day she was going to receive freight. That is about all the information necessary in any office that takes "The Guide," what day the boat is going to accept freight, and what day she is going to sail.

Q. You find that out from "The Guide"?

A. Yes.

Q. If you have some goods to ship to the continent, or to England, you go to "The Guide" to get the information as to when she is going to sail?

A. Or any other port anywhere else.

Q. So you would use "The Guide" for those purposes?

A. Any shipper uses "The Guide" to know what day he has to get his freight ready to go forward.

Q. You spoke a few moments ago about the bill of sale being the contract; I am going to show you here something that you are undoubtedly very familiar with already. That is the Shipping Board bill of lading. You will notice it says, "From San Francisco to Koln, Germany." What is your understanding as to the exclusiveness of that bill of lading as the contract of carriage to Koln? Are the goods going direct to Koln, or what would be your understanding?

A. The way that bill of lading is made out, the destination, so far as the bill of lading is concerned, is Hamburg. [446]

(Testimony of J. S. Jenks.)

Q. How would you tell that—from the bill of lading, itself?

A. The bill of lading says "Hamburg."

Q. It says that up at the top?

A. Yes, unto the port of Hamburg.

Q. If you got a bill of lading like that and it had on it "San Francisco to Hamburg," your idea would be that the vessel was going right straight across to Hamburg, would it? A. No.

Q. What would your idea be?

A. My idea would be that the vessel would be very glad to get rid of the largest portion of her cargo first.

Q. Have you had much experience with ocean shipments?

The COURT.—Q. Let me ask you a question right here. In that particular bill of lading there is only one foreign port mentioned.

Mr. GRAHAM.—Yes, your Honor, one foreign port.

The COURT.—"From San Francisco to Hamburg."

Mr. GRAHAM.—Yes, your Honor.

The COURT.—Q. Wouldn't you think that was the only port she was going to make from San Francisco?

A. Oh, no, Judge, the bill of lading covers each specific consignment on the boat. We had bills of lading covering 10,000 and more barrels for Cardiff that says "Cardiff."

Mr. GRAHAM.—Q. If you had another bill of

(Testimony of J. S. Jenks.)

lading which read from San Francisco to Rotterdam, like this one, for instance, reads—here is another one of your shipments—that reads to Rotterdam, doesn't it?

A. Yes, that reads to Rotterdam.

Q. Where is one San Francisco to Cardiff?

A. Yes.

Q. You have three bills of lading there; what would your idea be as to where the vessel was going?

The COURT.—The three bills of lading represent shipments on the same ship?

Mr. GRAHAM.—Shipments on the same shipped, shipped by the [447] California Wine Association to three different ports, Cardiff, Rotterdam, Hamburg.

Q. What would be your idea as to how that vessel was going—I mean just from the bill of lading, itself?

The COURT.—Of course, it is understood that this is what would be his idea as to the ports she would touch, or the order in which she would touch them, according to the custom at that time.

Mr. GRAHAM.—Yes, your Honor, according to the custom at that time.

A. I cannot see that I could ever say that there was anything in connection with any custom. The cargo we had on the boat was pretty near half of the cargo for Cardiff, if not more—I don't know the exact measurement of the cargo, but by weight alone it would be about half of the steamer's capacity.

Q. I think it has been stipulated here, Mr. Jenks,

(Testimony of J. S. Jenks.)

that she had about 2,600 tons for Cardiff, and I think all of it was yours, or approximately yours. Is that about correct, Mr. Mannon?

Mr. MANNON.—That is approximately correct.

A. The only reason there might be other cargo to Cardiff—I know we engaged the space to Cardiff; Cardiff is not a regular port of call, ordinarily, from San Francisco.

Mr. GRAHAM.—Q. Did you know what her regular ports of call were at that time.

A. I did not.

Q. You didn't know what the range of this European-Pacific service was?

A. I beg your pardon, what is that?

Q. I say you didn't know what the range of this European-Pacific service was, what the range of ports was? A. No.

Q. You did know that she went to other ports than Cardiff?

A. Oh, yes. She went to Cardiff because we asked them if they could take this to Cardiff. [448]

Q. And you have already seen that she had some for Rotterdam? A. Yes.

Q. I showed you that bill of lading. A. Yes.

Q. And some for Hamburg?

A. A very small portion for Hamburg.

Q. So your office knew she was going to Cardiff, Rotterdam and Hamburg?

A. I didn't know it through the bills of lading, but I knew incidentally that she was going to those three ports.

(Testimony of J. S. Jenks.)

Q. Again I will ask you, taking these three bills of lading which I understand you to testify to represent the contract of carriage, and showing you that they are to three different ports, what would you say would be the customary route of that vessel?

A. To the nearest geographical port.

Q. Have you had any experience in water shipments, shipments by sea?

A. In all my various traffic experience I have made reservations at various times for shipments by water.

Q. And always the shipments that you made by water went to the first geographical port?

A. I would not say that.

Q. So you would say, would you, that you have had some experience where vessels did not call at the first geographical port?

A. I would not say I had that experience. My experience would be to secure the space for the port I wanted.

Q. And you were not concerned with how the vessel went, so long as she got to the port that you wanted in reasonable time?

A. Well, I think whatever I may have thought in the past was entirely different in this particular instance; we wanted the cargo at the ports as soon as possible.

Q. You did?

A. We had a great deal of money involved. We wanted to get all the freight to Cardiff or Swansea

(Testimony of J. S. Jenks.)

and have it properly sorted. We had a selling campaign on previous to the arrival of the cargo.

Q. Had you sold this cargo?

A. I do not know that we had sold this. [449] I don't know anything about the sales end at all. Our agents naturally knew this was coming, and their natural plan would be to try to sell it as quickly as possible.

Q. So you are not familiar with whether or not any of this wine which you sent over at that time was sold?

A. It certainly would not have been sent there unless it had been expected that it would be sold.

Q. But you cannot say that any of it was sold when it was shipped?

A. I don't think any of it was sold before shipment. It was not intended to send 40,000 odd barrels to England without the intention of selling it as fast as possible; there was too much money involved in it.

Q. I appreciate that. You were thoroughly covered by insurance, weren't you?

Mr. MANNON.—That is objected to as immaterial. It is admitted.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. You cannot testify, can you, as to whether any of this was sold?

A. I had nothing to do with the selling end at all.

Q. As I understand you, you have had a lot of experience in shipments by rail. You were connected with the Southern Pacific Co. The company

(Testimony of J. S. Jenks.)

with which you are now connected is mostly interested in rail shipments, is it not? A. Yes.

Q. Can you name specifically any experience you have had with shipments to Europe, before the sailing of the "West Aleta"?

A. I cannot say that I ever took out any space engagements for any companies out of the port of New York on shipments moving rail to New York. Of course, I knew that such export bills of lading were taken out.

Q. As to shipments by water out of San Francisco during the [450] time that you have been testifying to, had you had any experience previous to the sailing of the "West Aleta" or previous to the booking of cargo on the "West Aleta" as to water shipments to Europe, or to England, of wine?

A. Not of wine, no.

Q. Not a bit?

A. Oh, I can't say that I didn't have a bit; I may have reserved space for some shipments.

Q. You don't remember?

A. I don't remember that; it is a good many years ago.

Q. How about other commodities? Did you have any experience in water shipments of other commodities from the Pacific Coast to Europe? I mean shipments like the "West Aleta" shipments. You were not in that business generally, were you?

A. It is so many years ago that I cannot say I actually engaged space for the people I was employed by, or not.

(Testimony of J. S. Jenks.)

Q. But most of your experience was experience along rail lines, wasn't it? That is right, isn't it?

A. When I was with the California Fruit Canners Association it was not entirely rail lines.

Q. Where did you make any ocean shipments for them?

A. Oh, that is too many years ago to remember.

Q. Where were they shipping from?

A. If they shipped by water they shipped from San Francisco Bay.

Q. Were you doing a European business at that time, do you remember? A. I cannot remember.

Q. How long ago was that?

A. That was from 1900 to 1908.

Q. After you left them who did you go with then?

A. I did traffic work from 1911 until 1915, in San Francisco; I was doing traffic work for various firms.

Q. That is, you were employed in their traffic departments? A. Part time, yes.

Q. What were some of those firms? [451]

The COURT.—What is the object of this?

Mr. GRAHAM.—I am trying to show that Mr. Jenks is not very familiar with the custom of shipment in the European-Pacific trade. He has just testified, your Honor—

The COURT.—Mr. Jenks has said so in so many words.

Mr. GRAHAM.—Very well, your Honor.

Q. So you cannot say whether it was customary on water shipments from the Pacific Coast to Eu-

(Testimony of J. S. Jenks.)

rope to ship the most direct geographical way, can you?

A. I think it is the expectation of the shipper to get his goods to market as fast as possible.

Mr. GRAHAM.—I move to strike that out, your Honor, as not an answer to the question.

The COURT.—The question asks you for the custom. The motion to strike is granted. Can you answer the question, Mr. Jenks?

A. My answer would be that most shippers expect to get their goods to destination as soon as possible, so as to get their money.

Mr. GRAHAM.—I move to strike that out. I wish you would confine yourself to answering the question, Mr. Jenks.

The COURT.—The question is, Do you know what the custom was in reference to that.

A. Well, I cannot help but think that any shipper—

Q. That is your individual view. You don't know what the custom was, or do you?

A. I cannot say that it is a custom, at all.

Mr. GRAHAM.—Q. You testified further, Mr. Jenks, to this bill of lading being the contract. Not having had much experience in water shipments from San Francisco to Europe in those times, or even previous times, you cannot say that a bill of lading reading San Francisco to Cardiff necessarily imports a contract to carry the goods direct from San Francisco to Cardiff, can you?

(Testimony of J. S. Jenks.)

A. Except whatever the law requires in connection with the transportation. [452]

Q. Are you familiar with the law, as to what is required in connection with transportation by water?

A. No, I am not a lawyer.

Q. So you are not familiar with the law?

A. I am not familiar with decisions that may have been given at various times in connection with the interpretation of bills of lading.

Q. So the legal interpretation of the bill of lading you don't know much about: That is a fact, isn't it?

A. That is a fact, yes.

Q. And as to the bill of lading being the contract of carriage, and just what your contract of carriage is under an ocean bill of lading, you are not too sure about that, either, are you?

A. I only know that it reads from one port to another, and the shipper expects it to be carried out in accordance with the interpretation the Courts have given to the bill of lading.

Mr. GRAHAM.—I move to strike out the entire answer as not responsive to the question.

The COURT.—Motion denied. That answer cannot do anybody any harm.

Mr. GRAHAM.—Q. Do you know the interpretation the courts have given to these bills of lading?

The COURT.—That is unimportant. This Court will be governed by this bill of lading if it is in itself clear when I come to examine it; I have repeatedly said that if it is not clear, if it is ambiguous, then I will be governed, of course, to some

(Testimony of J. S. Jenks.)

extent, by the custom and the practical construction shippers have given this particular provision of the bill of lading. Mr. Jenks says he is not acquainted with the custom, if there was any custom.

Mr. GRAHAM.—Q. You have spoken about the arrival of these goods in Europe; did you make any inquiry when the vessel was to arrive, or was expected to arrive at Cardiff and Rotterdam and Hamburg? A. No.

Q. You did not make any inquiry at all?

A. No. [453]

Q. So you didn't know whether she was going to go to Hamburg first, or to Cardiff first?

A. I only assumed she was going to Cardiff first.

Q. In looking at "The Guide" for the purpose of finding out when the vessel was going to sail, you, of course, looked at the ad of Williams, Dimond at that time, didn't you? That would be the natural thing to do, wouldn't it?

A. I don't think I looked at "The Guide." I had my advices from Williams, Dimond & Co. that they were accepting the cargo.

The COURT.—The witness has said that he thinks this advertisement was placed in "The Guide" after he had reserved space.

Mr. GRAHAM.—Yes, your Honor.

The COURT.—And he has testified that his recollection is that he was not governed by "The Guide" in making this reservation of space.

Mr. GRAHAM.—Yes, he testified to that concerning the reservation for 10,000 barrels on No-

(Testimony of J. S. Jenks.)

vember 25. It is a fact that the advertisement started in on December 4th—isn't that the date, Mr. Mannon?

Mr. MANNON.—I think it is December 4.

Mr. GRAHAM.—There is another letter making a further booking, which letter is in evidence, and dated December 16. That was after the advertisement started. The advertisement started on December 4. I want to ask him if he knows anything about the advertisement as of December 16.

Q. What is your recollection on that, Mr. Jenks?

A. I did not see "The Guide" at all.

Q. So you didn't pay any attention to the sailing date, so far as "The Guide's" information was concerned? A. No.

Q. Do you know how much money was involved in this shipment?

A. No. I do not. [454]

Q. You do not know what the cargo was worth?

A. No.

Q. You know it was pretty valuable, of course?

A. Most assuredly.

Q. Do I understand you to say that with a cargo as valuable as this that you didn't know when she was going to arrive at the other side, and didn't pay any attention to the route which she was following?

A. I had too much to do at that time to pay much attention to anything, except to get it out.

Q. So you wanted to get it out, and you didn't care where it went?

(Testimony of J. S. Jenks.)

A. I wanted to get it out of the way and get it to Cardiff as soon as possible.

Q. And yet you tell me you didn't pay any attention to the route she was going to travel?

A. My natural supposition was that the boat would naturally unload the largest portion of her cargo first.

Q. Have you ever had anything to do with the loading of the vessel? A. No.

Q. Have you ever had anything to do, previous to the "West Aleta," with shipping as large a quantity of wine as this?

A. No, and I don't think anybody ever had.

Q. So that you really cannot say that your supposition as to where it would go on the ship, and where it would be unloaded first, because it was large, was founded upon any customary acts on your part as shipper?

A. Well, I cannot say that; I cannot answer that that way. We offered cargo to an unusual port of call, because it was a very large cargo, and they accepted it for that port. That was the main portion of the cargo of the ship.

Q. But you knew, however, that the ship was full, or would be full of other cargo of other people, didn't you?

A. I couldn't say that, that I knew she was going to be full.

Q. What was your experience in those times, as to getting space [455] for shipments in that European service?

(Testimony of J. S. Jenks.)

A. I don't know anything about that.

Q. Didn't you just tell me—

A. I didn't understand that, I thought you meant about getting cargo for those ports.

Q. No, I mean about getting space for your cargo.

A. I had quite a time in getting space.

Q. So that would lead you to believe that those boats were going out full, wouldn't it?

Mr. MANNON.—That cannot be evidence, your Honor, in this case.

A. It was not a question of that; it was a question of getting a boat to take such a large cargo to that kind of a port.

Q. All your shipments were not large at that time, were they?

A. I know that we sent out 40,000 barrels at that time.

Q. But this shipment of 11,000 barrels was largely out of proportion to the size of your other shipments, wasn't it? A. I don't know about that.

Q. You don't remember whether the vessel was going out full or light, then, do you?

A. I was not concerned with whether she went full or light, so long as she went out the day before prohibition went into effect.

Q. So I say you don't know whether she went out full or light? A. I don't know it.

Q. And you have not had experience in loading such a large amount of wine on any vessel, either before or since, have you?

A. Certainly not since, and very little before.

(Testimony of J. S. Jenks.)

Q. So you cannot tell where that customarily ought to go in a ship for discharge, can you?

A. I don't know anything about loading cargo.

Q. And I suppose that applies to discharging cargo; you are not a steamship operator, and you don't know much about discharging a [456] vessel, do you? A. No.

Q. Mr. Mannon read you a clause from the bill of lading, "Via the Panama Canal." Of course, you and I appreciate that "via the Panama Canal" does not mean transshipment at the Panama Canal does it? A. No, it doesn't.

Q. Suppose you had "Via Hamburg," and you were shipping to Koln, what would you expect in that instance?

A. Hamburg would be the port of call. Koln is an interior point.

Q. Koln is a waterway, isn't it?

A. That I don't know.

Mr. MANNON.—Is it, Mr. Graham?

Mr. GRAHAM.—Yes, it is. It is on the Rhine River, leading directly to the ocean; ocean-going vessels go there.

Mr. MANNON.—It is not a port, is it?

Mr. GRAHAM.—Yes, it is.

Mr. MANNON.—Our understanding is that it is not a deep-water port, and that ocean-going vessels do not go there.

The WITNESS.—Cardiff is not a regular port of call from here, although it is a very deep-water port.

(Testimony of J. S. Jenks.)

Mr. GRAHAM.—Q. So in some cases "via" might mean transshipment?

A. No. The destination there was Hamburg. It was not via Hamburg; the bill of lading read Hamburg. If you had a shipment destined for Sacramento, here, and you wanted to ship it by water, you would ship it to Sacramento via San Francisco.

Q. Just the same as Koln via Hamburg?

A. Yes, just the same; it has to reach the port. Hamburg was the port of the bill of lading.

Q. This letter of December 16, relative to 2,000 barrels for Rotterdam; as I understand the situation, these bookings that were made in the letters to the California Wine Association were subject to change with the steamship operators, so that if you wanted to put on a little more and take off a little, or switch around the ports, you could; isn't that the fact? [457]

Mr. MANNON.—We object to the question as immaterial, and as calling for a legal conclusion. We think that those were space contracts.

The COURT.—I will permit the question.

A. My answer to that question would be that there was no intention of switching around the ports. There was evidently a question originally in the letter of November 25, 1919, there were 4,000 barrels reserved for Rotterdam; and then on December 16 we added 2,000 barrels, apparently—yes, we did; then in the letter of December 16, 1919, 2,000 of the 6,000 barrels—approximately 6,000 barrels—were transferred to another steamer, which left a total

of 4,100 barrels for the "West Aleta." There seems to be a difference of 100 barrels in there. There is a pencil notation in my handwriting on the letter of November 25, 1919, stating that 100 barrels had been added.

Mr. GRAHAM.—I think I understand the situation, Mr. Jenks. That leaves the situation where the November 25 letter is subject to your further negotiations and merely represents that you expect to have about 14,000 barrels of wine on the "West Aleta" for those two ports.

Mr. MANNON.—We object to that on the ground that it is immaterial, because the witness' supposition cannot control the contract.

The COURT.—I will sustain the objection.

Mr. GRAHAM.—Q. When you wrote these letters, you, of course, understood you were entering into a bill of lading which would be your contract, didn't you? A. Yes.

Mr. MANNON.—He didn't write these letters, they came to him.

Mr. GRAHAM.—Q. The letters are confirmation of your previous arrangements?

A. I don't know whether the arrangements were by correspondence or whether they were by personal conversation. [458] The only evidence submitted is that Williams-Dimond confirmed a reservation for 10,000.

Q. Have you any other letters, Mr. Jenks, written by you?

(Testimony of J. S. Jenks.)

A. I don't remember whether there were any letters, or not. There probably were not any letters.

Mr. MANNON.—I will state that those are the only letters that we have been able to get.

Mr. GRAHAM.—Q. Did you have any previous experience with the Shipping Board bill of lading, Mr. Jenks? A. I cannot remember.

Q. You do not know whether you did, or not?

A. No.

Q. How did you happen to know that the vessel was going to Rotterdam, do you remember that?

The COURT.—He has explained that. He said he was looking for space to send these goods away, and he knew Mr. Hooper, and called on Williams, Dimond & Co. I think you are re-covering the same ground.

Mr. GRAHAM.—Q. Were you familiar with the congestion in English ports at that time? A. No.

Q. You didn't know that the ports were congested? A. No, not at all.

Q. Will you state whether or not you were familiar with the practice of the European-Pacific Line of making the furthest port north on the continent first or last?

Mr. MANNON.—I object to the question as immaterial, because it now appears, according to the evidence stipulated here, that there could not be any custom on the part of the European-Pacific Line, its first sailing having only been three months before this transaction occurred.

The COURT.—I will overrule the objection.

(Testimony of J. S. Jenks.)

A. I knew nothing about it. [459]

The COURT.—That was bound to be his answer, in view of his previous testimony.

Mr. GRAHAM.—Q. Are you familiar with this deviation clause in the United States Shipping Board bill of lading? A. Not particularly so.

Q. Did you ever read it?

A. I do not know that I have ever read it before this cargo was accepted.

Q. Did you ever read it after the cargo was accepted? A. Not that I know of.

Q. So that you cannot say whether or not the ship, in this particular case, had a customary right to go in the order she did?

A. Only by the interpretation of the courts as to the bill of lading.

Q. As I understand it, you are not familiar with that interpretation.

A. I am not familiar with that interpretation.

The COURT.—He is not familiar with that, or with the custom under this clause.

Mr. GRAHAM.—Q. Did you handle the insurance for these shipments, Mr. Jenks?

A. Well, I would say we did, but I had nothing to do with taking out the insurance.

Q. You didn't have anything to do with it, yourself? A. No.

Q. And you don't know anything about it?

A. All I know is that naturally insurance was made, but I don't know anything about it.

(Testimony of J. S. Jenks.)

Q. Do you know whether the insurance has been paid?

A. I don't know anything about it, only I am assuming that there was insurance.

Q. Who handled the insurance for your company?

The COURT.—What difference does that make?

Mr. GRAHAM.—The stipulation shows that this is an insurance case, your Honor. The testimony shows that the California Wine Association, Rosenberg & Co., and S. L. Jones & Co. are not damaged [460] at all in this case, that they have been fully paid.

Mr. MANNON.—That is an unfair statement, Mr. Graham.

Mr. GRAHAM.—I beg your pardon, Mr. Mannon, I don't want to make any unfair statement.

The COURT.—Well, whether that was true, or not, it is unimportant now in the cross-examination of this witness.

Mr. GRAHAM.—I think that is all.

Redirect Examination.

Mr. MANNON.—Q. Mr. Jenks, I understand your testimony to be in regard to the stowage of wine and brandy on board ships, that you simply don't know anything about it, do you?

A. I don't know anything about it.

Q. In the course of your traffic experience, you have not dealt with the loading of cargoes on ships?

A. Not at all.

(Testimony of J. S. Jenks.)

Q. In regard to custom, and whether or not there is any custom, as to where boats are going under bills of lading, like the one that has been shown you, I understand your testimony to be simply that you don't know any custom about it?

A. I don't know any custom about it.

Mr. MANNON.—That is all.

TESTIMONY OF R. SCIARONI, FOR LIBELANT (IN REBUTTAL).

R. SCIARONI, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. Your business is in connection with the California Wine Association, is it not?

A. Yes.

Q. And was in 1919 and 1920? A. Yes.

Q. In what capacity in 1919 and 1920 were you employed by the California Wine Association?

A. As secretary.

Q. What, if anything, did you have to do with securing marine insurance at that time?

A. I placed all the insurance for the California Wine Association. [461]

Q. In that connection, did you have to do with placing insurance on the cargo on the "West Aleta"?

A. I did.

Q. I am referring now to her second trip, when she was wrecked. I will ask you what knowledge, if any, you had concerning the order of ports of call of the ship "West Aleta"?

(Testimony of R. Sciaroni.)

A. We had a cargo for both Cardiff and Rotterdam, and I naturally assumed, of course, that the cargo—

Mr. LILLICK.—Now, just a moment, Mr. Sciaroni. We ask that what the witness assumed, may it please the Court, be stricken out.

Mr. MANNON.—If your Honor please, before you rule on that, I understand there is an effort being made by opposing counsel to draw an inference from the insurance policy that the California Wine Association knew the order of ports of call of this vessel, that is, that the order of ports of call would be Hamburg, Rotterdam and Cardiff. This witness placed the insurance, had charge of it. We want to show that he had no knowledge acquired from any source whatsoever in that regard; in other words, we are endeavoring to prove a negative, so far as that is concerned.

The COURT.—But what he assumed would be incompetent. The objection is sustained.

Mr. MANNON.—Q. You cannot say what you assumed, Mr. Sciaroni. What knowledge, if any, did you have that this vessel, the "West Aleta," intended to go to Hamburg before she went to Rotterdam and Cardiff, or Cardiff, if you had any such knowledge?

A. I had no knowledge that she would go to Hamburg first.

Mr. MANNON.—That is all.

Cross-examination.

Mr. LILLICK.—Q. Had you seen the advertise-

(Testimony of R. Sciaroni.)

ment in "The Guide"? A. I had not.

Q. You knew nothing whatever about the proposed voyage of the 'West [462] Aleta" other than that you had cargo going on her to Rotterdam and Cardiff? A. That is all.

Q. How about the cargo that you had on her for Hamburg? A. I knew nothing about that.

Q. It was my understanding that you placed all of the insurance on the cargo taken on the "West Aleta" for the California Wine Association: That is not true?

A. Yes, I had charge of all the insurance. I arranged for the insurance with the Fireman's Fund for Cardiff and Rotterdam.

Q. And knew nothing about any cargo for Hamburg? A. Not until afterwards.

Q. What do you mean by "Not until afterwards"?

A. After the vessel had sailed; then it was reported to me that our sales department had taken two small orders for Hamburg.

Q. What did you do about the insurance on that?

A. When we made the final return for Cardiff and Rotterdam we also included the small amount for Hamburg.

Q. Then you did know that the vessel was going to Hamburg? A. After she had sailed.

Q. Then you qualify the testimony you gave on direct examination as to your knowledge by your knowledge on a certain day, and what you might have known on a succeeding day?

(Testimony of R. Sciaroni.)

A. I knew nothing about the shipment to Hamburg until after the vessel sailed.

Q. It was my understanding that you testified that you knew nothing about the voyage other than to Rotterdam and Cardiff; now on cross-examination you amplify that by saying that subsequently you learned that she was going to Hamburg: Is that correct?

Mr. MANNON.—I submit that that is not a statement of the witness' testimony. The testimony of the witness is, and I submit [463] the record will bear me out, that he had no knowledge concerning the order of ports of call, that is to say, he had no knowledge that the vessel was destined to Hamburg first.

The COURT.—I will overrule the objection.

A. My first impression about Hamburg was after the vessel was lost. That was the first knowledge that I had officially that we had some goods aboard for Hamburg.

Mr. LILLICK.—Q. And how long was that after the vessel sailed?

A. The vessel sailed, I think, in January, and this was late in February; I think it was late in February, or early in March.

Q. And you placed the insurance on the Hamburg shipment?

A. This small shipment for Hamburg was written out by a clerk in the office; it was only a few hundred dollars, whereas we were dealing here with hundreds of thousands of dollars.

(Testimony of R. Sciaroni.)

Q. I didn't ask you that, Mr. Sciaroni. I asked you whether you placed the insurance on the Hamburg cargo late in February; did you or did you not?

A. Personally, I did not place the insurance for the Hamburg cargo; it was placed by a clerk.

Q. Did you place the insurance on the cargo for Rotterdam and Cardiff? A. Yes.

Q. Then when you testified on direct examination that you handled the insurance, you meant that you handled only a part of the insurance?

A. I had general charge of the insurance.

Q. A clerk insured the Hamburg cargo, but under your directions, didn't he?

A. He had general instructions to make a final return of the amount, of the value.

Q. Who gave him those instructions?

A. I did.

Q. Did he have anything to do with placing the insurance on the Rotterdam or Cardiff cargo?

A. He worked out the details.

Q. Then it was he who placed that insurance also, wasn't it? A. Which? [464]

Q. To Rotterdam and Cardiff.

A. I arranged for it all.

Q. Let us not split words over it, Mr. Sciaroni. You apparently are endeavoring to distinguish between the clerk's duties on the Hamburg cargo and your duties on the Rotterdam and Cardiff cargo. Will you explain to me what this clerk who placed

(Testimony of R. Sciaroni.)

the Hamburg insurance did with that, and what he did with the Rotterdam and Cardiff cargo?

A. He made the final report in both cases.

Q. In all three cases?

A. Yes, in all three cases.

Q. Then the clerk to whom you refer had that as his duty, had he? A. Yes.

Q. He did it and you did not; is that true?

A. Yes, he made out the final report under my direction.

Q. Then you directed him to attend to the Hamburg cargo, too, didn't you?

A. Of course, I will have to generalize a little bit in that way. He—

Q. No, pardon me, Mr. Sciaroni, I don't care for any generalities, I want to know what the fact in reference to what you, yourself, did, is. Let us start that way, what did you do about the insurance?

A. I took the matter up with the Fireman's Fund Insurance Company and told them that we had a cargo for Cardiff and for Rotterdam, and requested them to cover us in the premises.

Q. To whom did you talk. A. Mr. Swales.

Q. Mr. Swales, of the Fireman's Fund?

A. Yes.

Q. How much did you place in that conversation? A. In the neighborhood of $600,000.

Q. Do you remember the amounts?

A. Not offhand.

Q. How was that confirmed?

(Testimony of R. Sciaroni.)

A. That was confirmed after the loading was completed by a return made by this clerk.

Q. Did you have anything more to do about it than what you have just told us about telephoning to Mr. Swales of the Fireman's Fund, "Cover us on cargo going out on the 'West Aleta,' part to [465] Rotterdam and part to Cardiff, amounting to $600,000"?

A. I may have had a second conversation with Mr. Swales.

Q. Then your connection with it is limited to a conversation you had over the telephone with Mr. Swales covering what you told him over the telephone about placing certain insurance?

A. That is all.

Q. And that is all you had to do with it?

A. That is all I did.

Q. And the clerk in your office is the one who, in working out the details, gave to the Fireman's Fund the formal notice of the actual amounts?

A. Yes.

Q. And that was undoubtedly in writing?

A. That was in writing, I think.

Q. When, if at all, did you hear about the placing of the Hamburg insurance?

A. After the vessel was reported lost.

Q. Did you have any conversation with Mr. Swales about that? A. No.

Q. So that you didn't know until after the loss of the vessel that the clerk in your office had placed

(Testimony of R. Sciaroni.)

certain insurance on the "West Aleta's" cargo with the Fireman's Fund? A. I did not.

Q. I will put that so that the record will be straight about it. You didn't know anything about that until what you heard afterwards as to the placing of it: Is that correct? A. That is correct.

Q. You made no inquiry when you talked to Mr. Swales about rates, did you?

A. I asked him to give us the best obtainable rate.

Q. You got no definite figure? A. No.

Q. You simply said, "We are sending out a cargo of wine and brandy on the 'West Aleta,' we want you to cover it, the details will be furnished to you later?

A. Yes. Mr. Swales may have indicated the approximate rate.

Q. Is it not a fact, Mr. Sciaroni, that in that conversation you mentioned no amount of money?

A. Oh, I undoubtedly did. [466]

Q. It is not what you undoubtedly did, Mr. Sciaroni, did you?

A. I will say that I did.

Q. How much did you mention?

A. I cannot recollect offhand.

Q. The details of the amount had to be figured out according to the c. i. f. or f. o. b. price?

A. No. We insured this so much a barrel. We knew approximately the number of barrels we had shipped. I gave Mr. Swales the approximate amount when I first took it up with him.

(Testimony of R. Sciaroni.)

Q. What necessity was there, then, for a clerk giving him any report on it?

A. To make the final confirmation of it, the final returns.

Q. In other words, the actual placing of the insurance was effectuated by the formal application?

A. I didn't get that question.

Q. In other words, the effectuation of the insurance was formally worked out in this written application? A. I would say so.

Q. Couldn't I state that the opening conversation of yours with Mr. Swales probably commenced by saying that you, as a friend of Mr. Swales, telephoned to him that you were going to place some insurance on the "West Aleta"?

A. I had never met Mr. Swales.

Q. You mean that was the first conversation you had with him?

A. I probably had a conversation with him before, but I never had met him. That was a definite placement of that insurance.

Q. You feel, then, that this conversation you had with Mr. Swales placed the insurance, although there was not any rate mentioned?

A. I won't say now that there was no rate mentioned.

Q. You said so a few moments ago.

A. I am rather inclined to think that Mr. Swales may have indicated what the rate would be. He may have said it may vary very slightly from this figure.

(Testimony of R. Sciaroni.)

Q. Have you no recollection about that at all?

A. You know, we had a great number of shipments at that time.

Q. Yes. You were thinking more about getting the wine out of the country than anything else, weren't you?

A. We were primarily concerned [467] with that.

Q. You didn't care whether the vessel went to Copenhagen, to Hamburg, or anywhere else, did you?

A. We had made our arrangements to store it at Cardiff, and get it in shape for sale.

Q. You say to store it at Cardiff? A. Yes.

Q. You had not sold it yet, had you?

A. We had made our selling arrangements.

Q. I say, you had not sold it yet, had you?

A. No, it had not been sold.

Q. Do you know whether, in the application made by the clerk to whom you refer a rate was mentioned in that application?

A. Whether in the application from the clerk to the Fireman's Fund a rate was mentioned?

Q. Yes. A. I am quite certain it was not.

Q. What type of report was it that the clerk made?

A. Just the actual amount of money that we were to be insured.

Q. Is that clerk, or was that clerk in a situation where he placed insurance for the California Wine Association as a part of his general duties?

(Testimony of R. Sciaroni.)

A. He was a shipping clerk.

Q. Did that shipping clerk have at his desk a blank which covered the placing of insurance?

A. Will you describe what you mean?

Q. I mean a book or a pad with certain formal words on it, "California Wine Association desires insurance to the amount of so much money placed for a voyage to such and such a place."

A. I suppose it is a form of that kind.

Q. I am not asking you what you suppose, Mr. Sciaroni, I want you to be particular about this. Do you know whether that is the fact, or not?

A. He had a blank, a book with certain forms in it which he filled out as shipments were made.

Q. So that the clerk, then, was the person in the employ of the California Wine Association, who, in the last analysis, gave to the [468] Fireman's Fund, or the National Insurance Co., or the Hartford Insurance Company the details of the insurance for the voyage the vessel was to go upon, and other necessary items which would enable the insurance company to place the insurance; that is true, isn't it?

A. He gave the details, but he had no authority to deviate from my instructions.

Q. What were your instructions to him?

A. To place it with the Fireman's Fund.

Q. Now, isn't this the fact: Your conversation with Mr. Swales of the Fireman's Fund was, We propose to ship some wine on the "West Aleta," we will wish you to insure it, the detailed informa-

(Testimony of R. Sciaroni.)

tion will be furnished you later; wasn't that, in effect, the conversation?

A. No, that was not it. It was an actual placement of a certain amount of insurance, on cargo destined for Cardiff and Rotterdam.

Q. You didn't know how many barrels were going until the ship left, did you?

A. We knew approximately. There might have been a failure upon our part to complete the shipment. That was the only reason for the final written confirmation from the clerk. Mr. Swales placed that insurance. I know from conversations that I have had with Mr. Swales that he would report over the phone that he had arranged for so much insurance on a certain boat.

Q. Your impression is, then, that after that telephone conversation that you had with Mr. Swales, had there been a loss, and nothing more occurred, your clerk who had these formal applications and did not make them out, the California Wine Association would have paid the full amount that you over the telephone told Mr. Swales you wanted?

A. I am quite confident that the Fireman's Fund would have paid that insurance.

Q. And that without a segregation of the number of barrels to go to Cardiff and the number of barrels to go to Rotterdam: Is that [469] your idea?

A. That is my idea.

Q. So it didn't make any difference whether that boat was going to Rotterdam, or to Cardiff, or to Copenhagen, the Fireman's Fund would have paid

(Testimony of R. Sciaroni.)

the insurance just the same; that is the fact, is it?

A. They would have paid it on the placement of a telephone order.

Q. I am asking you in a little more detail now in reference to your last answer, whether the Fireman's Fund would have paid that policy, whether after the wine went to Cardiff and after the wine went to Rotterdam it is your impression that they would have paid the loss?

A. You may not have understood me quite correctly. When I took up the matter with Mr. Swales I indicated the approximate amount for Rotterdam and the approximate amount for Cardiff.

Q. Now, let us get at that approximate matter. How many barrels were going to Rotterdam, according to your knowledge then—not what you know now, Mr. Sciaroni, but according to your knowledge then.

A. I have not looked into the matter since. I know that the greater part of the cargo was for Cardiff. I remember that distinctly, because that is where most of our shipments were going.

Q. I am trying to get your mind back to the day when you had a telephone conversation. Let us segregate what you learned since. I know it is rather difficult to do that, Mr. Sciaroni.

A. Yes, that is pretty hard to do.

Q. Just put yourself in the position you were when you talked to Mr. Swales. Your knowledge then was that you were going to send out so many barrels; how many would you say?

(Testimony of R. Sciaroni.)

A. Offhand I would say about 10,000 barrels.

Q. Of the 10,000 barrels how many were going to Rotterdam? A. Maybe 3,000. [470]

Q. Are you speaking of your recollection, or are you speaking of what you have learned since?

A. I give you my word, I haven't looked up the details of the "West Aleta" shipment since this matter has come up in court.

Q. I am trying to put you in the situation you were then, anxious to get out of the California Wine Association's cellars all of the wine that they could possibly ship out of the United States, because there were a number of different vessels going out then, weren't there? A. Yes, there were.

Q. I am trying to reconstruct what occurred when you telephoned to Mr. Swales. I think it is correct to say, is it not, that you telephoned to Mr. Swales that you were going to send out of San Francisco say 10,000 barrels of wine, and that you wanted him to cover 10,000 barrels of wine, and that a part of it was going to Rotterdam and that a part of it was going to Cardiff; isn't that, in substance, what the conversation was?

A. No, I am quite sure that I indicated the exact number of barrels for Cardiff and the exact number of barrels for Rotterdam.

Q. Why do you say now that you indicated the exact number of barrels when a few moments ago, on two or three occasions you said approximately.

A. Well, it may have varied 100 barrels either

(Testimony of R. Sciaroni.)

way; I don't wish to be pinned down to the actual number of barrels.

Q. You understand, don't you, that this case, though it does not affect the California Wine Association probably now, is one where, as an element of the findings the Court will make, we must take into consideration your conversation with Mr. Swales, and whether or not it made any difference to Mr. Swales, or it made any difference to you—and I don't think it did—that a part of the cargo was to go to Rotterdam and a smaller part to [471] go to Cardiff and a still smaller part to go to Hamburg, we will say; it didn't make any difference, did it?

Mr. MANNON.—We object to the question as immaterial, and particularly in that it contains an incorrect expression of law; it doesn't make any difference what this witness understands as to what the law is or what is involved in this case. Opposing counsel is asking the witness as to what this witness understands to be the importance of this conversation. We should not be bound by that. The question is improper. We submit that this line of questioning should be as to what the conversation was.

Mr. LILLICK.—I will withdraw the question.

Q. Mr. Mannon, in an objection to a question I have just asked you, Mr. Sciaroni, has suggested I am seeking to obtain from you the expresson of an opinion as to the law. I don't want you to misunderstand me, I have no such desire. I ask you,

(Testimony of R. Sciaroni.)

don't you know, Mr. Sciaroni, that in the conversation you had with Mr. Swales he would have covered you by the insurance in the Fireman's Fund Insurance Co. for this shipment of wine, whether it was to Hamburg, or to Rotterdam, or to Cardiff?

Mr. MANNON.— I object to the question on the ground that it is argumentative. We submit that all that counsel is entitled to ask this witness is what was the conversation, and the details of it. Now, he is asking him as to what Mr. Swales may or may not have said.

Mr. LILLICK.—The witness has stated he cannot remember the details of the conversation. I am asking him as to what he actually knows of the situation existant then between the Fireman's Fund Insurance Company and the California Wine Association, with himself as the mouthpiece of the California Wine Association, and Mr. Swales as the mouthpiece of the Fireman's Fund.

Mr. MANNON.—I think if the question is read counsel will [472] see that he is mistaken. Will you read the question, Mr. Reporter?

(Question read by the Reporter.)

The COURT.—I will overrule the objection.

A. I will not say that with particular reference to the "West Aleta" that this incident took place, but I know that in conversations with Mr. Swales in connection with the placing of insurance the matter of the dangers in the North Sea was brought out, and that it might be more difficult to get in-

(Testimony of R. Sciaroni.)

surance for ports in the North Sea. I will say that as far as the "West Aleta" is concerned, no reference to Hamburg was made by me to Mr. Swales.

Mr. LILLICK.—Q. But you did refer to Rotterdam, and you did refer to Cardiff?

A. I certainly did.

Q. And the vessel did go to Hamburg?

A. That I don't know.

Mr. MANNON.—She didn't go to Hamburg, did she?

Mr. LILLICK.—Q. The vessel was intended to go to Hamburg. A. That I don't know.

Q. But the clerk who placed the insurance did place insurance in the Fireman's Fund on the Hamburg cargo?

A. He placed a small amount of insurance for Hamburg.

Q. And at the same rate exactly.

A. I don't know.

Q. You don't know that? A. No.

Mr. LILLICK.—Mr. Mannon, will you furnish us with the details of the insurance on the Hamburg cargo and the details of the insurance on the Rotterdam cargo, and the details of the insurance on the Cardiff cargo?

Mr. MANNON.—Yes. I can state that as far as I know the five barrels of liquor that were consigned to Hamburg were not insured at all. The witness has testified that he thinks someone told him they were insured. So far as I know they were not insured, and so far as I know the Fire-

man's Fund did not pay any insurance on that. [473]

Mr. LILLICK.—The importance of it is this—

Mr. MANNON.—I am simply stating that so far as I know there was no insurance on those five barrels of liquor.

Mr. LILLICK.—The witness tells us that there was. A. I don't know, I assume that.

Mr. LILLICK.—The only importance of it is to prove that the Fireman's Fund insured this shipment to Hamburg, and to Cardiff, and to Rotterdam at this same rate.

Mr. MANNON.—I may state, in answer to counsel's request, that so far as my investigations show there was not any application for any insurance to Hamburg. I have here the application, or, rather, the report that has been testified about, which bears date January 23, 1920, the date, I think, of the policy. This refers only to Cardiff first and then to Rotterdam, and does not refer to Hamburg at all. There may be a Hamburg application. You notice that is not on a form, it is a letter.

Mr. LILLICK.—Let us use this, then, to refresh Mr. Sciaroni's recollection. We offer this as our exhibit next in order. It reads as follows:

RESPONDENT'S EXHIBIT "L."

"CALIFORNIA WINE ASSOCIATION,
"216 Pine Street.
"San Francisco, California.
"January 23, 1920.

"Fireman's Fund Insurance Co.,
California & Sansome Sts.,
San Francisco, Cal.

"Gentlemen:

"(Please refer your reply to AB/BL)
"Attention: Mr. Swales.

"Please be advised that the following is our final and complete specifications for insurance per the Stmr. 'WEST ALETA' which sailed from San Francisco on or about January 6th.

"To Cardiff, Wales 11,000 barrels wine valuation $456,955.00.

"To Rotterdam 1,108 barrels Brandy—1,250 barrels [474] wine valuation $120,493.00.

"To Rotterdam (marked Geneva) 1,742 barrels wine valuation $65,423.00.

"The above is to cover insurance for both Marine and War risk. We understand that the Geneva lot is to be insured as far as Rotterdam only.

"Will you kindly send policies to us at the earliest possible moment?

"Very truly yours,
"CALIFORNIA WINE ASSOCIATION,
"By A. BARRICKS,
"Assistant Sales Manager."

(The letter was marked Respondent's Exhibit "L.")

(Testimony of R. Sciaroni.)

Q. Mr. Sciaroni, I hand you this letter, Respondent's Exhibit "L," and ask you whether with that before you to refresh your recollection you would not now say that this insurance was actually effected by the California Wine Association through this letter, rather than through the telephone conversation that you had?

A. I would say that it was effected through my telephone conversation with Mr. Swales.

Q. You would? A. Absolutely.

Q. Regardless of rates, and regardless of amount?

A. The matter of rates was discussed, no doubt.

Q. You say "no doubt."

A. I am certain of it. Of course, I cannot refresh my mind to name the rate, but I know it was mentioned.

Q. Can you tell us whether at that time Mr. Swales said to you that the rate to Rotterdam will be 35 cents a hundred and the rate to Cardiff 30 cents a hundred—those are purely fictitious figures. A. I cannot recollect.

Q. You would not be able to tell us anything as to what was said in connection with the rate?

A. No.

Q. Would you be able to say whether the same rate applied to [475] Rotterdam as to Cardiff?

A. I would not want to make a definite statement on that.

Q. Don't you know, Mr. Scaroni, that the same rate did apply to Cardiff and to Rotterdam?

(Testimony of R. Sciaroni.)

A. I do not.

Q. Even now, having refreshed your recollection by conversation with your counsel in connection with the case, wouldn't you say that the same rate was charged to Rotterdam as to Cardiff?

A. No, I would not say that.

Q. In other words, you would not say whether it was the same rate, or any other rate?

A. I have not looked into the matter at all. I relied upon my memory to testify.

Q. What is your explanation of the difference between you and your counsel that has become apparent within the last few minutes as to the insurance on the shipment to Hamburg? Mr. Mannon tells us that there was no insurance.

Mr. MANNON.—I say so far as I know.

Mr. LILLICK.—Yes, so far as Mr. Mannon knows.

A. I would not say that there was. I do know that there was a small shipment of a few barrels of wine to be unloaded at Hamburg. I learned that after the ship got into trouble.

Q. And yet I understood you to say you knew that because of this clerk having placed the insurance on it; was I mistaken on that?

A. I didn't want to intimate anything of that kind.

Q. Then I may be mistaken. I am not intending to mislead you at all. Do you not know that the rate at that time for insurance placed by the California Wine Association in the lots that it did place

(Testimony of R. Sciaroni.)

insurance with the Fireman's Fund in was the same for Rotterdam and Hamburg?

A. No, I don't know that.

Q. Don't you know that at that time the rate of insurance for the California Wine Association for wine to Rotterdam and to Cardiff was the same?

A. No, I cannot say that it was. As I said [476] before, I think the element of the North Sea entered into the discussion.

Q. That perhaps was war insurance. I notice that this application speaks of both straight insurance and war insurance.

A. Perhaps.

Q. You have no independent recollection of it at all?

A. Not with reference to the "West Aleta."

Q. How many thousand barrels of wine would you say were shipped by the California Wine Association in the months of September, October, November and December of that year?

A. From California?

Q. From California.

A. About 40,000 barrels.

Q. Was that all shipped out under your insurance covering?

A. I covered all the insurance.

Q. Did you cover that all with the Fireman's Fund? A. All except one lot.

Q. And what was the reason for your covering that particular lot in another company.

Mr. MANNON.—I submit that is immaterial.

(Testimony of R. Sciaroni.)

The COURT.—Yes, I think so.

Mr. LILLICK.—Q. Did you, during this period of the shipment of the 40,000 barrels of wine, pay any extra insurance for a policy in which a deviation clause occurred?

A. I do not recollect any.

Q. In placing the insurance, you personally never went into the details of the policies, did you?

A. What do you mean by that?

Q. I mean, for example, taking this policy: Warranted free from particular average, unless the vessel, craft, be stranded, sunk or burned. You never took up a clause like that and asked them about its meaning, did you?

A. Well, they had all our marine insurance, and they knew exactly how we wanted to be covered. It was [477] a general thing that had been carried down by my predecessors, and we simply went along in that way.

Q. When you telephoned, you say, for the coverage of this wine, was it, in a sense, a report to them under another policy?

A. The open policy only covered amounts up, I think, to $50,000, but this being a larger shipment, had to be taken up independently.

Q. And in taking it up independently, you gave them no information other than what you have told us a few minutes ago—this general conversation; that is true, isn't it?

A. So much for Cardiff and so much for Rotterdam, yes.

(Testimony of R. Sciaroni.)

Q. Do you, by chance, remember the cargo that went on the "Crown of Castile?" A. I do.

Q. How many barrels went out on her?

Mr. MANNON.—I submit that is immaterial, your Honor, that is another cargo.

Mr. LILLICK.—The only connection is the deviation, your Honor, and the rates, as to what particular ports she went. This case is being hung on the question of these ports and the rates charged by insurance companies, to some extent, as to whether or not there was a deviation. So we are interested to know whether Mr. Sciaroni, in placing his insurance on the "Crown of Castile," for example, which went to these different ports, had any difference in his rate on those amounts. Do you object to that, Mr. Mannon?

Mr. MANNON.—I don't see how, in this proceeding, your Honor, you can try all of these cargoes that have been shipped by the California Wine Association.

Mr. LILLICK.—That is not the idea.

Mr. MANNON.—It appears here that the California Wine Association has shipped some 40,000 barrels. It also appears that there are about 10,000 barrels in this particular shipment, [478] so that there were, I suppose, same four or five cargoes, four or five shipments; we are trying a case involving one particular cargo; I don't see how this can have any possible relevancy to this case.

Mr. LILLICK.—I think we are entitled to it, your Honor.

(Testimony of R. Sciaroni.)

The COURT.—I don't understand clearly why you claim that this evidence is admissible.

Mr. LILLICK.—I claim that this evidence is admissible, your Honor, on the theory that the rate charged by the Fireman's Fund for the shipment to Glasgow, we will say, and the shipment to Cardiff, was either more or less.

Mr. MANNON.—What will that prove?

Mr. LILLICK.—That will prove, by the argument that we will make later, that this vessel did not deviate when, instead of putting into Cardiff, she started to go to Hamburg, or Rotterdam, because the insurance company's rate for these different places was the same, the insurance companies wrote insurance at the same rate.

The COURT.—Wrote insurance at the same rate for Cardiff and for Glasgow, do you mean?

Mr. LILLICK.—Yes, another case where, by the usages, which I understand your Honor has permitted in evidence, deviations, so-called, have been permitted.

The COURT.—I will overrule the objection.

A. I cannot recall at this date.

Mr. LILLICK.—Q. And perhaps you are unable to recall at this date the rate? A. I cannot.

Q. You would not be able to tell us whether she went to Glasgow or to Cardiff?

A. Not now; I assume she went to Cardiff. We had no cargo for Glasgow.

Q. You had no cargo for Glasgow?

A. At least that is my recollection. [479]

(Testimony of R. Sciaroni.)

Q. What was the rate, if you remember, on the cargo that was taken on the "Xenia"?

Mr. MANNON.—The same objection.

The COURT.—Objection overruled.

A. I do not recall the rate now. That is the "Belotta"?

Mr. LILLICK.—Yes.

A. I do not recall the rate now.

Q. In the payment of this loss, the Fireman's Fund, from the receipts which we have in evidence, paid the loss as a payment in full settlement and satisfaction of all claims against said company for the loss; in other words—

Mr. MANNON.—We have admitted that for the record, Mr. Lillick.

Mr. LILLICK.—In other words, it was not a loan receipt.

The COURT.—That already has been admitted.

Mr. LILLICK.—Yes, it is admitted, your Honor, but this witness has not testified to the difference between a loan receipt and payment in full.

Mr. MANNON.—I submit, then, that it is not proper cross-examination; I asked the witness absolutely nothing about that on direct examination. If you want to go into that you make the witness your own and I will have an opportunity of cross-examining him.

Mr. LILLICK.—That is all.

Mr. MANNON.—Q. I understand that you were in charge not only of the insurance on this par-

(Testimony of W. T. Bozeman.)

ticular cargo, but of all of the wine that the California Wine Association was shipping by sea, were you not? A. I was.

TESTIMONY OF W. T. BOZEMAN, FOR LIBELANT (IN REBUTTAL).

W. T. BOZEMAN, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. What is your occupation?

A. Traffic Manager. [480]

Q. Traffic Manager for what concern?

A. S. L. Jones & Co.

Q. S. L. Jones & Co. are one of the libelants here?

A. Yes.

Q. How long have you been in their employ?

A. About 13 or 14 years.

Q. What were you doing in connection with your concern in 1919 and 1920? A. Traffic Manager.

Q. What did you have to do, if anything, with the cargo that was on the "West Aleta" on the trip upon which she was lost, with regard to the making of a shipment?

A. I had supervision of the shipment, and made the booking for the space to accommodate the shipment.

Q. You say you made the booking; just what do you mean by that?

A. I engaged the space from the Williams-Dimond freight department, over the telephone.

Q. That was an oral negotiation over the telephone? A. Yes.

(Testimony of W. T. Bozeman.)

Q. Did you say you thought it was over the telephone? A. I know it was.

Q. You know it was over the telephone?

A. Yes.

Q. Do you know Mr. Hooper, who was with the Williams-Dimond Co. for some time? A. Yes.

Q. What conversation, if any, did you have with Mr. Hooper concerning the order of ports of call of the boat "West Aleta" on this trip?

A. No conversation with reference to the order of ports.

Q. What conversation, if any, did you have with Mr. Hooper concerning the vessel going to Hamburg before she went to Rotterdam? A. None.

Q. When did you first learn that the vessel intended to go to Hamburg before going either to Cardiff or Rotterdam?

A. Not until after we had heard of the wreck.

Q. In your experience as a traffic man, will you explain to the Court what the last document is that passes between a common carrier and a shipper of goods by sea? A. The bill of lading. [481]

Q. So far as your experience has taught you, will you state whether on not shipments are always made under a bill of lading?

A. Always, in my experience.

Q. There has been some testimony here concerning the custom of this port or some ports; the bill of lading that is involved in the S. L. Jones & Co. case reads, so far as the deviation clause is concerned: "And to touch at any port or ports, in any

rotation or order, in or out of the customary route, and to call at any port or ports more that once." I will ask you if you know of any custom of this port of any character concerning the interpretation of that clause?

A. No, I know of no custom that would interpret that clause.

Q. Do you know of any custom at any port in the world that would interpret that clause in any particular way, so far as custom is concerned?

A. No, sir.

Q. Do you know of any custom with regard to the interpretation of that clause in connection with advertisements in any way?

A. I never have heard of any such thing, no.

Q. These bills of lading that you speak of are, of course, used in the transit of goods by sea all over the world?

A. So far as I know that has been my experience.

Q. So far as you know, are bills of lading interpreted any differently in San Francisco than they are at any other port?

A. I never heard of any different interpretation.

Q. You don't know of any custom in San Francisco that interprets bills of lading differently from the way they are interpreted, say, in London?

A. No, sir.

Q. Do you know a publication called "The Guide"? A. I do.

Q. That is a newspaper published in San Francisco. I think there have been copies introduced

(Testimony of W. T. Bozeman.)

in evidence here. What reliance, if any, do you place upon "The Guide" in your establishment, in the [482] shipment of your goods, or in the securing of space for the shipment of goods for S. L. Jones & Co.?

A. We place no reliance whatever upon "The Guide" in securing space and making shipments.

Q. Explain to the Court how you usually secure your space from Williams, Dimond & Co.?

A. Or any other company?

Q. I asked you from Williams, Dimond & Co.

A. As a general rule, we phone; there are exceptions to that, perhaps, when we might engage the space in person by calling at the company's office.

Q. Is that confined to your dealings with Williams, Dimond & Co., or do you deal that way with other coucerns?

A. That is our universal practice.

Q. That is to say, you get in touch with the ship's agents in some way? A. That is right.

Cross-examination.

Mr. LILLICK.—Q. You have never handled any business in London, have you, Mr. Bozeman? By handling it in London, I mean your residence is in San Francisco, and your experience is in San Francisco?

A. Yes, my residence and experience has been in San Francisco for the most part. Do you mean have we shipped, or have I had experience in shipping goods to and from London while being in San Francisco?

(Testimony of W. T. Bozeman.)

Q. I know you have had experience in shipping goods to London, Mr. Bozeman, but you have never resided in London, nor have you acted in London in any steamship office there? A. That is right.

Q. What use do you make of "The Guide" in your office?

A. A very limited use, and that for incoming shipments; I refer to import shipments, shipments coming from London, for example, or from the Orient; and then we use it only as a matter of temporary or advance information as to possible arrival dates of the respective steamers that we are inquiring about. [483]

Q. After you had chosen the "West Aleta" as the vessel upon which you would make this shipment, you learned what her ports of call would be, did you not?

A. Not until after we had heard of the wreck.

Q. Didn't you make any inquiry whatever as to where she was going? A. No, sir.

Q. What cargo did you have on the "West Aleta"? A. We had some nutmegs.

Q. For what port? A. Rotterdam.

Q. What else?

A. We had a very small parcel of samples for Berlin.

Q. And the entry port for Berlin is Hamburg, isn't it? A. I believe so, yes.

Q. You knew she was going to Hamburg, did you? A. No.

(Testimony of W. T. Bozeman.)

Q. How did you expect the goods you were shipping to Berlin to enter?

A. Do you mean that Hamburg is the usually accepted port of entry for shipments going to Berlin?

Q. No, I mean how did you expect your goods to reach Berlin? You knew they were going through Hamburg, didn't you? A. No.

Q. How did you expect them to get to Berlin?

A. We were not particularly concerned with how they would get there. We had a parcel receipt covering a certain quantity of goods we shipped to Berlin.

Q. Did the bill of lading read Berlin?

A. The parcel receipt read Berlin.

Q. I am speaking about the bill of lading.

A. I don't believe a bill of lading was issued for that parcel.

The COURT.—Q. You are associated with what concern?

A. S. L. Jones & Co., importers and exporters, on California Street.

Mr. LILLICK.—We offer in evidence this bill of lading, dated January 2, 1920. "S. L. Jones & Co. to Joseph Herrscher, Hotel [484] Bristol, Berlin, Germany; 1 case samples Cd. Fish, copra cake, cocoa beans, milk, jams, beans, prunes, 50 pounds." That is the shipment to which you refer?

A. That is the shipment to which I refer.

Q. And the entry port of Hamburg is on the face of the bill of lading?

Mr. MANNON.—We call the Court's attention at

(Testimony of W. T. Bozeman.)

this time to the fact that while we have no objection to this particular bill of lading, there is no evidence that this bill of lading was delivered to the shipper. I take it that this is an office copy which is produced.

Mr. LILLICK.—I will have it identified in a moment.

Q. I hand you the exhibit which we have just put in evidence, and ask you whether that is not a duplicate original of the bil of lading that was delivered to S. L. Jones & Co.?

A. Yes, that is a duplicate of the bill of lading. Just by way of explanation, Mr. Lillick, I could not find a copy of the bill of lading, and it being a parcel, and it is customary never to take out a bill of lading for a small parcel, I assumed it was a parcel receipt.

Q. Then your testimony to that extent is in error. That is, by refreshing your recollection now, in looking at the bill of lading, you would say now that you did know that the "West Aleta" was to call at Hamburg?

A. May I see that once more, please?

Q. Yes.

A. Yes, I suppose we must have known that, if we had that bill of lading. Obviously, we must have known it.

Mr. LILLICK.—That is all.

Mr. MANNON.—That is all.

(An adjournment was here taken until to-morrow, Wednesday, January 7, 1925, at 10:00 o'clock A. M.)

[Endorsed]: Filed Jan. 17, 1925. [485]

Wednesday, January 7, 1925.

Mr. MANNON.—If your Honor please, regarding the matter we have spoken about heretofore, counsel have now agreed that the vessel, the "West Aleta"' was entered for insurance in the American Steamship Owners Mutual Protection Indemnity Association, Inc., covering this claim. I will read into the record an extract from the by-laws as follows:

"Liability for loss or damage to or in connection with the cargo, or other commodity, except mail or parcels post, to be carried, or which has been carried on board the steamship entered in the association, provided, however, that

"(a) The liability hereby insured against shall not exceed that which would be imposed by law in the absence of contract;

"(b) A deduction of 20 per cent shall be made from any claim arising under this clause where the member has become liable in consequence of deviation, and has omitted to insure the value of the cargo on knowing of such deviation, unless the contract of carriage contains a deviation clause approved by the association."

In the list of ships insured appears the ship "West Aleta," United States Shipping Board Emergency Fleet Corporation.

(Testimony of H. R. Higgins.)

Mr. GRAHAM.—In that respect, your Honor, and in view of the telegram which I read to your Honor yesterday from the Fleet Corporation, Washington, which stated that the "West Aleta" was not insured, I would like to have it understood that what Mr. Mannon has read is excepted to by us on the ground that he has not shown the scope of the coverance of this entry in the Club, whether it is for hull, or for particular risk, or what particular risk it does cover; nor has he shown whether or not that coverage at that time would continue to make the Club now reliable for a recovery [486] which might be had by these three libelants.

Mr. MANNON.—The only point of the offer is to show that the ship was insured against deviation where claims were made by her cargo, showing that she recognized the doctrine of deviation and that she was under liability. That is the only materiality of it.

TESTIMONY OF H. R. HIGGINS, FOR LIBELANT (IN REBUTTAL).

H. R. HIGGINS, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. Mr. Higgins, where are you employed?

A. By Rosenberg Bros. & Co., San Francisco.

Q. What line of work are you in there?

A. I am manager of the Traffic Department.

Q. How long have you been handling that traffic?

A. For seven years.

(Testimony of H. R. Higgins.)

Q. Will you state to the Court briefly what your experience has been in traffic matters?

A. You mean prior to that?

Q. Yes.

A. For nine years prior to that I was Pacific Coast Agent of the Southern Railway Company, at San Francisco, with jurisdiction over the Coast territory. For the previous 8 years I was connected with the same company in various capacities in Kansas City, St. Louis and Denver, representing them in those territories.

Q. So that all of your business career has been spent in traffic matters, I take it?

A. That is correct.

Q. And you have had to do with maritime shipments? A. Yes.

Q. Your firm, Rosenberg Bros., ships continually by water, does it not? A. Yes, very heavily.

Q. This litigation involves a shipment of goods on the "West Aleta," so far as Rosenberg Bros. are concerned, out of San Francisco, which went out in January, 1920, and which was loaded during the end of 1919 and the beginning of January, 1920; did you [487] have anything to do with that shipment?

A. Yes, the shipment that we had on board the "West Aleta," the space was engaged either by me or by one of my assistants under my jurisdiction.

Q. What knowledge, if any, did you have concerning the order of ports of call of the ship "West Aleta" on that voyage?

(Testimony of H. R. Higgins.)

A. I don't recall at this time the details of the transaction as far as her ports of call are concerned.

Q. Have you any recollection on that subject?

A. No, none whatever.

Q. Did you handle this matter personally, do you think, or do you think it was handled by your subordinates?

A. I think the details were handled by my subordinates.

Q. Will you state when you first learned, if you ever learned, that the vessel intended to go to Hamburg before going to Cardiff or Rotterdam?

A. I don't recall. The transaction is so old that it has escaped my memory.

Q. You are familiar with a newspaper known as the San Francisco "Guide," are you?

A. Yes, sir.

Q. And the "Daily Commercial News"?

A. Yes, sir.

Q. Rosenbergs subscribe to both of them?

A. Yes.

Q. I want to call your attention to a clause that appears in the bill of lading used by the Emergency Fleet Corporation vessel that this shipment went on, that is, the "West Aleta"; the bill of lading, we have agreed, is the same as the one set up in the statement of facts, here. This contains a so-called deviation clause or a liberty-to-call clause, reading as follows: "And to touch at any port or ports, in any rotation or order, in or out of the customary route, and to call at any port or ports

(Testimony of H. R. Higgins.)

more than once." It has appeared here that that ship was advertised in "The Guide" over a certain period of time for the ports of Hamburg, *Hamburg,* Rotterdam and Cardiff; will you state what the custom is, if there [488] is any custom here, or anywhere else, with regard to where the ship may call under such a clause and such an advertisement?

A. I do not know of any custom. They usually go to the ports of call. I think that is generally determined by cargo conditions, so far as my experience has gone.

Q. What reliance, if any, do you place upon advertisements in "The Guide," or in any other newspaper, with regard to your contracts of shipping?

A. We do not place any dependence in the advertisements.

Q. Your engagement for the shipment of goods by you is usually oral, is it, or is it in writing?

A. Generally oral; sometimes confirmed in writing, sometimes not.

Q. So far as you know, how was this "West Aleta" space engaged?

A. I think it was engaged orally.

Q. Do you know whether you engaged it personally, or not?

A. I cannot say at this time, no.

Q. You have other persons who are with you?

A. Yes.

Q. You never have heard of any custom to interpret a bill of lading and an advertisement together, have you, showing where the ship is going?

(Testimony of H. R. Higgins.)

A. No, we would not depend upon the advertisements at all.

Q. Did you ever hear of any other shippers who did that? A. No, I do not know of any.

Q. Rosenbergs are considerable shippers of goods, aren't they? A. Yes, heavy shippers.

Q. And for European ports the Rosenbergs are perhaps the second or third heaviest shipper out of this port? A. I should say so, yes.

Q. And they were in 1919 and 1920? A. Yes.

Q. Referring back to the year 1919, are you able to state whether or not the Williams, Dimond & Co. service under the name of the [489] European-Pacific Line was an old-established service, or a moderately established service, or a new service, or what kind of a service it was?

A. It was a brand new service. I think it started in August, 1919, if I remember correctly.

Q. With regard to service to the United Kingdom and continental ports, was there a shipping service out of this port prior to that time, are you able to state?

A. No, I think there was no service from this port to the United Kingdom or continental ports during the war, or after the war until the European-Pacific Line started up.

Q. And this vessel, the "West Aleta," on her previous European trip, was the first vessel out in that service, wasn't it? A. I think she was, yes.

Cross-examination.

Mr. GRAHAM.—Q. Mr. Higgins, in this particu-

(Testimony of H. R. Higgins.)

lar instance, did you personally engage any space on the "West Aleta" for Rosenberg Bros.?

A. I do not recall whether I handled it personally or whether it was handled by one of my assistants.

Q. You cannot say?

A. No, I cannot say. We made so many shipments on every ship practically that went out of here that there is nothing to distinguish this one in my mind from others.

Q. You were shipping on Williams-Dimond vessels to Europe and to England previous to this trip of the "West Aleta"? A. Yes.

Q. Do you remember the ships that you were shipping on?

A. We were on the "West Aleta" on her first trip, in August; we had very heavy consignments.

Q. Do you know where they were going?

A. I do not recall now.

Q. Do you recall the "Effingham," which preceded the "West Aleta" on the voyage on which she was lost?

A. I remember the "Effingham"; I don't remember the order in which she sailed, as compared [490] to the "West Aleta's" sailing date.

Q. Did you have some cargo on her?

A. Yes, I think we did; I was sure we had some on the "Effingham" at one time or another, whether it was on that trip, or not, I cannot say.

Q. Do you remember the "Bakersfield"?

A. Yes.

Q. You had some cargo on her? A. Yes.

(Testimony of H. R. Higgins.)

Q. I understand you to testify that all of the detials were handled by your subordinates?

A. As a general proposition, yes.

Q. And you did not rely on "The Guide"?

A. No. We were in daily touch with the steamship agents, either by phone, or one of my men would go over there personally.

Q. What do you use "The Guide" for?

A. We use "The Guide" to show the sailing dates, the piers at which the ships will receive, and the date they will receive, and general information of that sort.

Q. You do use it?

A. Oh, yes; we use it now to a greater extent than we did then, because conditions are more settled.

Q. You count it as a pretty reliable shipping paper, don't you?

A. Oh, yes, it is a very good publication for its purpose.

Q. If you saw an advertisement in "The Guide" which read "West Aleta" for Hamburg, Rotterdam and Cardiff, your inclination would be that she was going to those ports in that order?

A. We would confirm that from the agents.

Q. You would ring up the agents and ask them if that is where she was going?

A. Yes, and the order in which she was going.

Q. And if the agent testified that it was their practice to inform large shippers, like yourselves, of the itinerary and routing of these vessels, you

(Testimony of H. R. Higgins.)

would not say that that was an incorrect statement, would you?

Mr. MANNON.—I object to that question. Counsel has no right [491] to ask this witness whether he would say what another witness has testified to was right or wrong.

The COURT.—Objection sustained.

Mr. GRAHAM.—Q. Do you remember whether anybody from Williams-Dimond told you the route or itinerary of the "West Aleta," or of these various vessels, at the time?

A. No, I don't recall that they did.

Q. You would not say that they did not?

A. I would say that we asked them in specific instances. I do not know that they gave us the information voluntarily in any case; I don't recall that they did or did not.

Q. And, of course, if you asked them they would give you the information, wouldn't they?

A. Yes.

Q. You had some cargo in this vessel for Hamburg; do you remember how much?

A. No, I do not.

Q. You don't remember whether it was considerable, or not?

A. I have not the slightest recollection as to the quantity.

Q. Do you remember the ratio it bore to the Rotterdam cargo? A. No, I do not.

Q. You don't remember that? A. No.

Q. How about the sale of this cargo; most of

(Testimony of H. R. Higgins.)

your cargo, or practically all of your cargo was sold when it was shipped, wasn't it? You were not sending it on consignment to yourself, were you?

A. We made both kind of shipments, direct sales and consignments of our own goods.

Q. Do you remember the fact in regard to the "West Aleta" shipment? A. No, I do not.

Q. What were conditions in Hamburg as to the desirability of getting cargo there at an early date, do you remember?

A. You mean business conditions?

Q. Yes, business conditions.

A. That is a matter that our Export [492] Sales Department would be more familiar with than I. I do not think I could venture an opinion or, rather, that I can recall exactly what the conditions were there.

Q. You remember this was right after the war, and shortly after, and trade conditions had been opened in Germany then, had they not?

A. Yes. The "West Aleta," on her first trip, took a very heavy cargo of foodstuffs from this port, but after that I think according to my recollection, the business slacked off very materially. I doubt very much if we had much cargo on the "West Aleta."

Q. Which voyage do you mean?

A. The first voyage was the one we had the heavy cargo on.

Q. And you don't think you had very much cargo on this second voyage of the "West Aleta"?

(Testimony of H. R. Higgins.)

A. No, I don't think we did, according to my recollection.

Q. You know you had some, don't you?

A. Yes, I know we had some.

Q. I show you, Mr. Higgins, one of the bills of lading covering shipments made by you to Hamburg; that is the contract of carriage, is it?

A. Yes.

Q. What would you say, looking at that contract of carriage, as to the routing of this vessel, could you tell where the vessel was going first, or not?

Mr. MANNON.—I don't think the witness' interpretation of the contract is binding.

Mr. GRAHAM.—Q. What is the customary interpretation of that contract as to where the vessel was going? Could you customarily say where she was going by just looking at that bill of lading, there? A. No.

Q. Would you say she was going to Hamburg first? A. No, not necessarily.

Q. Would you say she was going to Rotterdam first, if it read [493] Rotterdam; if Rotterdam were there in place of Hamburg, would you say the vessel was going to Rotterdam first?

A. No, not necessarily.

Q. If Cardiff were there instead of Hamburg, would you make the same answer? A. Yes.

Q. If I told you that you had approximately 20,000 bags of rice, of beans, of sweepings on the "West Aleta," on this voyage, would you think that was a fairly large shipment, or not?

(Testimony of H. R. Higgins.)

A. No, I would consider that a comparatively small shipment.

Q. About how many tons is that?

A. 20,000 bags?

Q. Yes. A. That would be 100 tons.

Q. So you think you only had about 100 tons on that ship? A. I don't know.

Q. I have just added up the figures. You think it was about 100 tons? A. Yes.

Q. Is this your letter, Mr. Higgins? A. Yes.

Mr. GRAHAM.—If your Honor please, this is a letter from Rosenberg Bros. & Co., which Mr. Higgins has identified as his own. I offer it in evidence as Respondent's Exhibit "N." It reads as follows:

RESPONDENT'S EXHIBIT "N."

(Letter-head Rosenberg Bros. & Co.)

"San Francisco, Cal., Dec. 4, 1919.

"In reply Please refer to File HRH.

"Williams, Dimond & Co.,
310 Sansome St.,
San Francisco, Cal.

"Gentlemen:

"Confirming 'phone conversation with Mr. Clark:

"Please book for our account 500 tons of rice or beans to Hamburg, on S. S. 'West Aleta.'

"We thank you for option on an additional 1000 tons on this ship, good until night of 8th inst. [494]

"Yours truly,
"ROSENBERG BROS. & CO.

"LB."

(Testimony of H. R. Higgins.)

(The document was marked Respondent's Exhibit "N.")

Q. Do you remember whether you exercised that option for the additional 1,000 tons?

A. No, I do not.

Q. You don't remember? A. No, I do not.

Mr. MANNON.—Counsel now produces a carbon copy of a letter; I have not the original. I have no objection to counsel showing this copy to the witness.

Mr. GRAHAM.—Q. I show you another letter, Mr. Higgins: Do you remember receiving that?

A. No.

Q. You don't remember it? A. No, I do not.

Mr. MANNON.—We have no objection, to its going in evidence on counsel's production of it from his files.

Mr. GRAHAM.—We introduce this in evidence and ask that it be marked Respondent's Exhibit "O." It reads as follows:

RESPONDENT'S EXHIBIT "O."

"December 10th, 1919.
500–EO.

"Messrs. Rosenberg Bros. and Co.,
334 California Street,
San Francisco.

"Gentlemen:

"SS. 'WEST ALETA.'

"This will confirm reservation of space for your account covering shipment of 250 tons of Rice

(Testimony of H. R. Higgins.)

and Beans to be forwarded from here to Hamburg on the above-named steamer.

"We will advise you in due course as to when we will commence issuing shipping permits and receiving cargo for this steamer.

"Thanking you for this business, and awaiting your further pleasure, we remain.

"Yours faithfully,

"H."

(The letter was marked Respondent's Exhibit "O.") [495]

Q. So you had at least 750 tons; is that a fairly large shipment on one ship?

A. Yes; that is a fair-sized shipment. Of course, there is nothing to show that we actuallly fulfilled that; it might have been cancelled; I don't know. I don't know what the quantity was that we shipped on that boat.

Q. So that these confirmations of bookings do not represent any contract at all?

A. No. The bill of lading represents the contract.

Q. You are not familiar with the sale of these goods, whether they were sold or not?

A. No, I am not.

Q. If I told you that the goods were sold for delivery in Hamburg, would you be concerned in the traffic department with the date of arrival in Hamburg? You would not, would you?

A. No, we would be concerned with the time of shipment, to get it forward within the contract

(Testimony of H. R. Higgins.)

period, which would call for generally the first half of a certain month, of the last half of the month, or at any time during the month or sometimes over a period of two months.

Q. Didn't you ever sell for delivery date?

A. No, we never sell for delivery date, it is always for time of shipment.

Q. Always for shipment within a certain time?

A. Yes.

Q. Is it not a fact that at that time, in 1919 or 1920, there was a great demand for foodstuffs, such as you people were shipping, in Hamburg and Germany, to be shipped through the port of Hamburg; that is the fact, is it not?

A. Yes, I think there was throughout Europe.

Q. More specifically Germany. Germany was in worse condition than any other of these countries after the war: Isn't that the fact? A. Yes.

Q. So you were anxious to get your goods laid down in Germany as soon as possible?

A. That was the concern of the consignee. Our main object was to ship them within the contract period. [496]

Q. And you didn't care, of course, what route the vessel took at all?

A. Yes, we wanted delivery within a reasonable time.

Q. You remember that you had goods on the "Effingham"? A. Yes, we did.

Q. You don't remember what route she took?

A. No, I do not.

(Testimony of H. R. Higgins.)

Q. If I told you that the "Effingham" took the route, Hamburg, London and Liverpool, you would not see anything unusual in that, would you?

Mr. MANNON.—That is objected to as immaterial. It does not make any difference whether it was unusual, or not; it was another ship.

Mr. GRAHAM.—May it please the Court, this witness testified he knew nothing about customs at that time on shipments to Europe going in or out of the geographical order. I want to show that he made other shipments, and that—

The COURT.—What bearing has on the case?

Mr. GRAHAM.—He has testified as to the custom about a certain thing.

The COURT.—He testified the custom was what?

Mr. GRAHAM.—He testified he didn't know what the custom was.

Mr. MANNON.—He testified he did not know there was any custom to his knowledge.

The COURT.—Yes, he testified he didn't know there was any custom as to whether the ports should be touched in their geographical order, or not.

Mr. GRAHAM.—And I am merely recalling this ship to him.

The COURT.—I will sustain the objection.

Mr. GRAHAM.—Q. You said in your direct examination, in answer to a question by Mr. Mannon, that in your opinion the ports of call depended upon the amount of cargo the ship had, that is, the cargo offerings.

(Testimony of H. R. Higgins.)

A. That had a great deal to do with it. [497]

Q. So that if you had a large amount of bulk cargo, you would expect that to go down in the bottom of the ship and be unloaded last, wouldn't you?

A. I would not attempt to say how the ship should be stowed.

Q. You don't know anything about stowage?

A. No.

Q. What do you mean by "cargo conditions," Mr. Higgins?

A. I meant the volume offering, and also the pressure brought to bear by certain shippers that might have a large cargo for a certain port and might want to get it there first. I have known them to take that into consideration in determining the order of the ports of call.

Q. Is it not a fact that in this particular case of the "West Aleta" you went to Mr. Hooper and told him you had a large consignment of goods represented by these letters, and that you wanted delivery in Hamburg speedily, and that he routed her for Hamburg to suit your convenience?

A. I have no recollection of that, at all.

Q. You don't remember that?

A. No, I do not.

Q. Did you handle the insurance in your concern?

A. No; that is handled by a separate department.

Q. You don't know anything about it, at all?

A. Nothing whatever.

(Testimony of H. R. Higgins.)

Redirect Examination.

Mr. MANNON.—Q. You have already stated, I think, that you were not conversant with the stowage of vessels.

A. I am not.

Q. That is out of your line? A. It is.

Q. I understand your testimony with regard to custom to be that there is not any custom, to your knowledge, with regard to the ship following the advertisement under a bill of lading like the one I showed you?

A. No, I never heard of any such custom.

Q. In regard to the demand for space out of this port, do you know whether or not the "West Aleta" was filled when she went out?

A. No, I do not. [498]

Q. So you would not know whether there was a great demand for the "West Aleta's" space, or not? A. No, I would not.

Q. You gave some testimony that there was a great demand in Germany for foodstuffs: That is correct, isn't it?

A. Yes, I think there was a demand there right after the war.

Q. As a matter of fact, your concern sent over a great shipment on the first boat that went out, the "West Aleta"? A. Yes.

Q. And you did not send such large amounts later, because there was trouble in regard to the payments for them: Isn't that correct?

A. That is correct, as I remember it.

Mr. MANNON.—That is all.

TESTIMONY OF THOMAS W. SMITH, FOR LIBELANT (IN REBUTTAL).

THOMAS W. SMITH, called for the libelant in rebuttal, sworn.

Mr. MANNON.—Q. You are a marine surveyor in this port, Mr. Smith, are you not? A. Yes.

Q. Will you state to the Court briefly what your experience has been in shipping matters?

A. My first experience was 32 years sea service, 22 years in command of vessels. For the last six years I have been a marine surveyor on the San Francisco waterfront.

Q. In connection with your sea experience, did you have anything to do with the North Sea?

A. Yes, for the first 20 years I was at least two months yearly in the North Sea.

Q. During the last six years you say you have been a marine surveyor? A. Yes.

Q. Will you explain to the Court what a marine surveyor does about cargo on a ship?

A. Supervises the loading, lays it out for stability, watches out that there is no overloading, and, in a general way, takes care of the ship for her seaworthiness.

Q. For whom does the marine surveyor act?

A. He is between the [499] underwriters and the ship owner. He is a guarantee man between the two parties.

Q. The ship owner is interested in having proper stowage, and the underwriters are interested in

(Testimony of Thomas W. Smith.)

having proper stowage, and the marine surveyor looks out for that. A. Yes.

Q. We are discussing here the ship "West Aleta"; did you know the "West Aleta"?

A. I knew of her type.

Q. State what you know about that ship? It appears in evidence here that she was an 8,800 Shipping Board Boat.

A. They are all practically the same in construction; there may be a little difference in the finish of them, but the construction work is practically the same in all of them.

Q. Have you ever had anything to do with the construction of these 8,800 ton boats.

A. I was representing one of the operators for a year as port captain, and I was handling her sister ship, the "West Camac."

Q. The "West Camac" and the "West Aleta" were built over here at Schaw-Batcher's, weren't they? A. Yes.

Q. Did you have an opportunity to examine the manifests of the "West Aleta"? I show you Respondent's Exhibit "C," which has been introduced in evidence here; have you examined that?

A. Yes, I have examined it.

Q. So that you know what cargo there was on the ship for Cardiff and what cargo there was on the ship for Rotterdam, and what cargo there was on the ship for Hamburg, according to this manifest? A. Yes.

Q. Now, I will ask you, Captain, if it is practi-

(Testimony of Thomas W. Smith.)

cable to stow that ship so that the ship could have gone first to Cardiff, and there the Cardiff cargo have been unloaded, then the ship to have gone to Rotterdam and there unloaded the Rotterdam cargo, and then [500] from Rotterdam gone on to Hamburg and there unloaded the Hamburg cargo? A. Yes, quite practical.

Q. Would the ship have been seaworthy at all times during the voyage, if she did that?

A. Yes.

Q. The manifest shows, I think, that the "West Aleta" carried for Cardiff 11,480 barrels of wine and 226,134 board feet of lumber for Cardiff; are you taking that into consideration in answering the question? A. Yes.

Q. And you could have loaded the boat so that that cargo could have been taken off at Cardiff first: Is that right? A. Yes.

Q. For Rotterdam the manifest shows the vessel had 1,149 barrels of bean oil that weighed 440 pounds each; 2,146 cases of bean oil aggregating 182,748 pounds; and 4,000 barrels of wine, weighing 500 pounds each; 4,180 bags of rice weighing 418 pounds; 76,853 board feet of lumber, and a balance of 25 tons of general merchandise; would it have been practical to have loaded the vessel so that after the Cardiff cargo had been taken off at Cardiff this Rotterdam cargo which I have just enumerated could have been unloaded at Rotterdam? A. Yes.

Q. Now, with regard to Hamburg, the cargo that

(Testimony of Thomas W. Smith.)

she carried, as shown on the manifest, was 155 barrels of wine, weighing 500 pounds each; 302 tierces of inedible tallow weighing 451 pounds each; 438 barrels of dried salt beef weighing 238 pounds; 16,586 bags of rice and beans aggregating 1,684,604 pounds; 2,288 cases of canned herring aggregating 163,276 pounds, and a balance of 40 tons of general merchandise; would it have been possible to have had that cargo so stowed when the ship left San Francisco that after you had taken off the Cardiff cargo, as you have testified, and after you had taken off the Rotterdam cargo, as you have testified, you could have taken the rest of it off at Hamburg? A. Yes. [501]

Q. And the ship would have been seaworthy during the entire transit, would she? A. Yes.

Mr. MANNON.—If your Honor please, there has been some little differentiation, I find, between the manifest and the agreed statement of facts, so I will ask the witness about the figures in the agreed statement of facts, also.

Q. We have an agreed statement of facts in this case, Captain Smith. Assuming that the steamship "West Aleta" loaded, and carrying approximately 2,634 tons of cargo destined for Cardiff, Wales, 1,503 tons of cargo destined for Rotterdam, Holland, and 660 tons of general merchandise destined for Hamburg, Germany; and assuming also that the cardiff, Rotterdam and Hamburg cargoes were chiefly barrels of wine, brandy and oil: With that cargo, could the ship

(Testimony of Thomas W. Smith.)

"West Aleta" have been so stowed when she left San Francisco that the Cardiff cargo could have been taken off at Cardiff first, the Rotterdam cargo taken off at Rotterdam second, and the Hamburg cargo taken off at Hamburg, Germany, third, the ship at all times being seaworthy during the voyage? A. Yes.

Q. I ask you to make up a stowage plan showing how that could be done; is that the plan you have there?

A. Yes. There are two or three ways, but I think this is one of the most efficient plans.

Q. Before we look at the plan, let me ask you this question: Do you find that the ship "West Aleta' was filled with freight, with the cargo I have specified, alone?

A. No, she had quite a little bit of space left besides deadweight tonnage.

Q. That is to say, all of the space on the "West Aleta" was not taken, as shown by that manifest?

A. No, it was not.

Q. In moving that cargo out of Cardiff and then moving out the Rotterdam cargo at Rotterdam, would it be necessary, if the vessel [502] were properly stowed, to move any of the other cargo to get off the Cardiff cargo first?

A. The way I have laid out that stowage nothing would have to be disturbed.

Q. And in unloading her as to the Rotterdam cargo, would it be necessary to move any of the other cargo at Rotterdam?

(Testimony of Thomas W. Smith.)

A. No, sir, not according to the plan.

Q. And of course at Hamburg all that would be necessary would be to clean out the Hamburg cargo? A. Yes.

Q. As a marine surveyor, if you had loaded her the way you have outlined in this plan, would you have given her a marine certificate? A. Yes.

Q. In your opinion as a marine surveyor, that would have been a proper thing to have done?

A. That would be a proper thing.

Q. This document that you hand me is the plan of loading to which you refer?

A. Yes, a plan drawn up from the manifest.

Mr. MANNON.—I offer this in evidence in connection with the testimony of this witness, and ask that it be marked Libelant's Exhibit 21.

(The document was here marked Libelant's Exhibit 1.)

Q. Referring to this Libelant's Exhibit 21, will you please illustrate to the Court on that plan where you put your Cardiff cargo?

A. The Cardiff cargo is indicated by the yellow space. By taking that out it leaves her in good trim to reach Rotterdam. The red is the Rotterdam cargo, the second port. By taking the Rotterdam cargo out it leaves the green, which is the Hamburgh cargo, distributed by filling up the high forepeak tank and using the No. 1 double bottom for fuel oil.

Q. On this plat that you have produced, Libelant's Exhibit 21, will you explain to the Court

(Testimony of Thomas W. Smith.)

what divisions there are in the hold, in front of the deep tank, etc.

A. There are two compartments, No. 1 and No. 2 lower hold. [503]

Q. The forward compartment is No. 1?

A. Yes.

Q. And the compartment right behind that is No. 2? A. Yes.

Q. Now, in the after part of the ship, explain what the compartments are there?

A. Those are what we call No. 4 and No. 5. This is what we consider the deep tank; sometimes it is called No. 3 hold. This is No. 4 hold, and this is No. 5 hold. There are two compartments here, both upper and lower.

Q. Starting in at the bottom part of the ship, Captain Smith, you have the hold divided into four compartments, haven't you? A. Yes.

Q. And between the fore and aft compartments the deep tank and the engine-room?

A. The deep tank and the engine-room, yes.

Q. In the forepart of the vessel, and immediately over the two compartments, what is this space?

A. That is what we call the 'tween-deck space. That is in two compartments also.

Q. And what is over the two aft compartments?

A. Also the 'tween-deck space.

Q. Where is the so-called shelter-deck space?

A. There is no shelter-deck on this, there is what we call the bridge-deck.

641

(Testimony of Thomas W. Smith.)

Q. As you have stowed the cargo, or indicated that the cargo might have been stowed so as to unload in the manner you mention, will you indicate to the Court what space there would be still on the vessel for other cargo?

A. The whole of the bridge-deck space, of a cubic capacity of 37,166. Then the cubic space in No. 1—I have not figured that out, but there is sufficient to give her space there to stow anything if there was any question that there was too much stowed up here.

Q. Will you indicate how you would have the Cardiff cargo taken out without disturbing the other cargo, according to your plan?

A. The yellow is the Cardiff cargo. You are working here your four hatches. This is the short hatch. They would double up on [504] this hatch. The wine would come out of No. 2 and No. 4 and No. 5.

Q. And that would all be accessible, would it, without moving any other cargo?

A. Without moving anything. This small green space here is in the forepart of the hatch. The lumber is in the wings, on the sides.

Q. The Rotterdam cargo is shown in red, is it?

A. Yes.

Q. Just indicate to the Court how that would come out.

A. After the Cardiff cargo comes out, this lumber would come out of No. 1; that is stowed in the wings, here; it is extended along here.

(Testimony of Thomas W. Smith.)

Q. How about the rice?

A. That would come up through the bridge-deck.

Q. Without moving anything?

A. Without moving anything.

Q. How about lower hold No. 4?

A. No. 4 lower hold could be discharged also, because the Cardiff cargo is out. And the same thing is true of No. 5, the Cardiff cargo being discharged.

Q. We have had some discussion here about wet and dry cargo; will you indicate to the Court whether the wet cargo is above or below the dry cargo?

A. All the wet cargo is stowed by itself right here. There is nothing here that can be damaged by wet goods. This takes up the whole space. This is the wine, that is the wine, that is the wine; this is lumber, in the wings of the 'tween-decks. The general cargo is in the forepart of the 'tween-decks. In the No. 3 'tween-decks is beans and rice. No. 4 lower hold, starting at the bottom, is Rotterdam bean oil; on top of that is Rotterdam case bean oil, the lower part being barrel oil; on top of that is stowed barrels of wine. In No. 5 hold we have tallow in the forepart of it, with dried salt beef stowed on top; cases of herrings stowed in the after part; stowed on top of that is the Hamburg beans and rice. That is a dry compartment. In No. 5 'tween-decks is stowed lumber in both wings.

Mr. MANNON.—That is all. [505]

(Testimony of Thomas W. Smith.)

Cross-examination.

Mr. GRAHAM.—Q. Are all of these 8,800-ton vessels exactly the same as to their carrying capacity and the dimensions of their holds?

A. More or less. There is a great similarity. There is not enough distinction to be noticeable, hardly.

Q. Have you ever had any experience in loading and carrying wine? A. Yes.

Q. What vessel?

A. I cannot name the vessel, but just previous to prohibition going in I loaded a full cargo of wine on one of the wooden Shipping Board boats for Hamburg.

Mr. MANNON.—Was it the "Bakersfield"?

Mr. GRAHAM.—No, the "Bakersfield" was not a wooden ship.

Q. The "Bakersfield" was not a wooden ship, was she, Captain?

A. No, the "Bakersfield" was not a wooden ship.

Q. Was it the "Xenia"?

A. I can't recall the name, but I know that I loaded the wine.

Q. This stowage plan that you have drawn up is drawn up on the consideration that you have so many tons of cargo of certain commodities to be delivered at certain points, isn't it? A. Yes.

Q. It has no bearing on when the cargo arrives at the ship for loading, at all, has it?

A. I don't understand you.

Q. I ask you if this cargo plan is drawn up

(Testimony of Thomas W. Smith.)

solely on the basis of having so many tons, and knowing the various commodities for the three ports in question? That is your sole basis for the stowage plan, isn't it?

A. The sole basis was, I started in at Seattle and first took that cargo on board, so that the vessel would be seaworthy coming down the coast. You know part of that was loaded at Seattle. All that cargo is taken care of so that she would be seaworthy coming down the Coast. Then she arrived here to take on the rest of her cargo, wine, beans, and rice.

Q. The only thing you have considered is the amount of cargo, and [506] the commodities?

A. The amount of cargo and the commodities?

Q. Yes: Is that right? A. Yes.

Q. What did you load in Seattle?

A. I loaded the tallow, the dried beef, and the lumber.

Q. And where was all that stowed?

A. That was stowed as shown in the plan.

Q. Was there anything on the floor of the 'tween decks covering over the hatchways when she left San Francisco? A. You mean with my plan?

Q. Yes.

A. In No. 5, no; in No. 4, wine. In No. 3 it is loaded over the deep tanks with beans and rice. In No. 2 with wine. No. 1 with lumber in the wings, and general cargo, with the hatches clear.

Q. Mr. Mannon has told you that this vessel would have approximately 660 tons of cargo after

(Testimony of Thomas W. Smith.)

she left Rotterdam to go to Hamburg; have you had any experience on that trip from Rotterdam up to Hamburg?

A. I have had experience around Terschelling Island several times.

Q. But on that direct trip from Rotterdam to Hamburg?

A. Not a direct voyage from Rotterdam to Hamburg. It is the same voyage, though, as coming from Scheld.

Q. That is a pretty rough voyage, isn't it, Captain?

A. No, not for a high-powered steamer. The North Sea is rough, but it is a short, choppy sea. Your big danger in the North Sea is the coast line, and not the heavy weather.

Q. How about the wind in the month of February? A. It blows hard.

Q. It blows hard? A. Very hard.

Q. So a ship would be pretty unmanageable if she were light, wouldn't she?

A. No. A ballast ship goes across there all the time. As I say, the wind is high, but there is no sea for a high-powered steamer to contend with. [507]

Q. I notice you have your cargo for Hamburg all loaded aft in No. 5. It is approximately 600 tons. What would be the effect of loading in No. 5 aft on the steerage way of a vessel?

A. It submerges her wheel more. By filling your No. 1 peak tank, which is 111 tons, and your

(Testimony of Thomas W. Smith.)

fuel oil tank, which is around 200 tons, that balances her up. What we want to get with a steamer is to get her screw submerged, so as to make her seaworthy.

Q. So that 111 tons forward would balance 600 tons aft?

A. No, it gives her 3 feet by the stern, which is what we want with a ballast ship.

Q. How high out of the water is the ship going to be going from Rotterdam to Hamburg?

A. That I could not say offhand.

Q. You don't know what she would draw?

A. I don't know, but probably about 14 feet aft and about 8 feet forward, 8 or 9 feet forward.

Q. She would be away out of the water, wouldn't she?

A. They all are; she is no exception to other ships.

Q. She would be away out of the water in this particular case with 600 tons aft, wouldn't she?

A. Naturally. I had the "West Camac" come back from London with nothing in her, and she came all the way across the ocean.

Mr. GRAHAM.—I move to strike that last part out, your Honor, about the "West Camac."

The COURT.—Motion denied.

Mr. GRAHAM.—Q. When you load a vessel, Captain, do you have all the cargo before you at the same time? A. No, you don't.

Q. So you would have to take into consideration, in drawing a stowage plan, the question of

(Testimony of Thomas W. Smith.)

when the cargo is going to arrive, wouldn't you?

A. Yes, we lay it out accordingly.

Q. That would have quite some effect on the stowage plan, wouldn't [508] it?

A. I don't see that it has much effect on it; it is all wine and beans. I am speaking of where there are 101 commodities coming to a ship.

Q. Is it not a fact that very often the engagement list showing cargo offerings on a ship is altered when offerings are cancelled?

A. At times.

Q. If you don't know until just about time the ship is ready to sail, about those matters, how should she be stowed?

A. We lay our plans and very seldom alter them; we may alter the position of certain cargo if we take certain other cargo. You notice we have the bridge-deck clear there to put anything you would want to.

Q. Would you put wine up on the bridge-deck?

A. Yes.

Q. How about beans?

A. No, not beans. Lumber can go on the bridge-deck. I can alter that plan two or three ways and make the delivery the same. I have only drawn that one up as one of the efficient plans.

Q. So if you had an offering of beans the last minute, that would alter your stowage plans, wouldn't it?

A. Not necessarily, with a vacant space in the No. 1 'tween-decks, and the No. 5.

(Testimony of Thomas W. Smith.)

Q. The question of the time of arrival of goods at the dock has nothing to do with making up the stowage plans?

A. Not when the ship is not fully loaded. Her cubic capacity is not taken up.

Q. How about her deadweight?

A. She was well free of her deadweight mark.

Q. That is, she could have taken more deadweight?

A. Yes, according to the tonnage shown on the manifest.

Q. It is possible, is it not, Captain, that there might have been cancellations of cargo offerings for the "West Aleta" which would have altered your stowage plan?

A. If there were cancellations it would make it all the less, wouldn't it? [509]

Q. That would alter your stowage plan, wouldn't it? A. Not necessarily.

Q. If you had drawn up your plan as indicated here, and some man came along and cancelled 1,000 barrels of wine, it would change it, wouldn't it?

A. It would change the buoyancy, it would change the amount in the ship, but it would not alter the stowage in that ship.

Q. Suppose the man came along and cancelled 1,000 barrels of bean oil, wouldn't that alter the stowage?

A. It would alter the stowage; I would have to put the bean oil in the shelter-deck.

(Testimony of Thomas W. Smith.)

Q. I am asking you if a man cancelled 1,000 barrels of bean oil, if that would alter the stowage?

A. It might alter the stowage, but all the weight is not in one compartment.

Q. I am asking you if it would not alter it.

A. It would alter the stowage plan, yes.

Q. So is it not a fact that you cannot tell exactly what your ship is going to stow until the cargo gets down there; that you only can tell approximately, in making up a plan like this?

A. This plan was drawn up after the ship was loaded. We lay out the cargo first, whatever is offered, so that we can take care of that cargo if anything is withdrawn at the last minute.

Q. This plan is drawn, as you said, after the cargo is loaded, and with the knowledge that you had that it was to have on board certain commodities of certain weights for certain ports?

A. Yes.

Redirect Examination.

Mr. MANNON.—Q. Captain, will you explain to the Court whether ordinarily, when you have a vessel to stow, you lay out a plan before you start putting in your goods, or not?

A. Yes, we always lay out a plan so that we know where our dry goods and our wet goods are going.

Q. So for a vessel here empty now, and you had a cargo coming to [510] the dock later, you would have to have a plan first, wouldn't you?

A. We have a rough plan; we have to have a plan drawn up finally before delivery. There are so

(Testimony of Thomas W. Smith.)

many different commodities coming down in a general cargo that we have to keep the wets clear from the dry. We have to keep the perishable goods from the damp goods. You cannot stow rice with lumber; the sweat created from the lumber would cause damage to the rice. All those things have to be taken into consideration. Therefore, we draw up a rough plan for the cargo before we start loading. Only as a finished thing do we draw up the final plan for delivery at the other end, to show the consignees where the goods are, and how they can work the ship, how many gangs can be worked at different ports.

Q. That is another way of saying that you have to plan out your work? A. Yes.

Q. Libelant's Exhibit 21 is on this blank form, and it has your name at the top?

A. Yes, that is a form I use with my ships.

Q. So you always have to lay out a plan for the ships? A. Yes.

Q. And it was nothing unusual to lay one out for the "West Aleta"? A. No.

TESTIMONY OF J. W. JORY, FOR LIBELANT (IN REBUTTAL).

J. W. JORY, called for libelant in rebuttal, sworn.

Mr. MANNON.—Q. What is your business or occupation?

A. Marine surveyor for the Board of Marine Underwriters.

(Testimony of J. W. Jory.)

Q. Whereabouts are you in business?

A. 351 California Street, San Francisco.

Q. How long have you been in that occupation?

A. Three years.

Q. What did you do before that time?

A. I went to sea.

Q. How long did you go to sea?

A. About 25 years.

Q. What did you do when you went to sea?

A. I started from boy [511] and worked myself up to master.

Q. So you have really spent your entire time in connection with shipping? A. Yes.

Q. And your present business has to do with shipping? A. Yes, it has.

Q. How frequently do you have occasion to survey vessels? A. Three or four times a day.

Q. Did you survey any to-day? A. Yes.

Q. Your regular business, then, is a marine surveyor? A. Yes.

Q. What do you make certificates for, if you make them?

A. To pass on the stowage, and to approve the vessel as seaworthy and fit to carry the cargo, and properly loaded, and enough fuel aboard to proceed.

Q. You are in the same line of business Captain Smith is, who has just testified here?

A. Except that I am not on a fee, I am on a salary.

(Testimony of J. W. Jory.)

Q. But the character of business you do is the same? A. Exactly the same.

Q. We are dealing here with the ship "West Aleta." The manifest is in evidence. It appears from the manifest that the "West Aleta" carried 11,480 barrels of wine, 226,134 board feet of lumber for Cardiff; then she carried for Rotterdam 1,149 barrels of bean oil; weighing 440 pounds each, 2,146 cases of bean oil aggregating 182,748 tons, 4,000 barrels of bean oil, weighing 440 pounds each, 2,146 bags of rice weighing 418 pounds; 76,853 board feet of lumber, and the balance of 25 tons of general merchandise. And she carried for Hamburg 155 barrels of wine weighing 500 pounds each and 302 tierces of inedible tallow weighing 451 pounds each, 438 barrels of dried salt beef weighing 230 pounds each, 16,586 bags of rice and beans aggregating 1,684,604 pounds, 2,288 cases [512] of canned herrings aggregating 163,276 pounds, and a balance of 40 tons of general merchandise. You have had those figures before you heretofore, haven't you?

A. Yes.

Q. Do you know a steamer of the type of the "West Aleta"?

A. Yes, the 8,800-ton type Shipping Board steamer?

Q. Yes. Will you state whether the cargo which I have just listed for you could be put on the ship "West Aleta" so that the Cardiff cargo could be taken off first, as I have specified it to you, and the Rotterdam cargo could be taken out next, and then

(Testimony of J. W. Jory.)

the Hamburg cargo could be taken off last, the ship at all times being seaworthy, and in taking off the cargo it not having to be necessary to move other cargo to any extent?

A. Yes, she can be loaded that way.

Q. If that were done, would the ship be seaworthy? A. Yes.

Q. You would be able to give her a certificate?

A. Why, certainly.

Q. Because of some little variation as between the manifest and the agreed statement of facts, I want to ask you about the figures appearing in the agreed statement of facts also. The figures are a little different, but about the same. Will you assume that the steamship "West Aleta" loaded out of San Francisco with approximately 2,634 tons of cargo destined for Cardiff, Wales, 1,503 tons of cargo destined for Rotterdam, Holland, and 661 tons of general merchandise destined for Hamburg, Germany; and assume also that the Cardiff and the Rotterdam cargo were chiefly barrels of wine, brandy and oil; will you state to the Court whether that cargo could have been so loaded that the Cardiff cargo could have been taken out first and the Rotterdam cargo could have been taken out second, and the Hamburg cargo could have been taken out third, the ship remaining seaworthy at all times?

A. Yes, she could be loaded to take that out.

Q. I asked you to make up a plan; have you got one? A. I have a [513] rough sketch, what we call a working plan.

(Testimony of J. W. Jory.)

Q. Will you please state to the Court how you lay out the cargo of a ship for loading, Captain?

A. On a type like this, where we know all the commodities, we have the cubic of each hatch—

Q. The cubic capacity of each hatch, you mean?

A. Yes; and we have a stowage factor for this kind of cargo; for instance, barrels of a certain capacity, and grain and lumber, etc.; we figure to stow that in the hold, to stow so much in that many feet.

Q. That is to say, you know the cubic capacity of the hold? A. Yes.

Q. And you know the cubic capacity of the cargo?

A. Yes. Then we figure the weight of this cargo to keep her in trim after the first cargo is discharged, or the second cargo is discharged, etc. Then we figure for stability, that she must not have too much above decks, or not enough below decks; she must be so stowed so that if there is cargo in the 'tween-decks, then we have to use the tanks, ballast in the fuel tanks or the deep tank. It is not quite so hard to stow a vessel of that type as it is a sailing vessel.

Q. With this cargo which I have enumerated to you, would the "West Aleta" be filled up, or would she have space? A. She would have space.

Q. This document which you produce here is a plan made up to put the cargo that has been recited to you on the ship "West Aleta"? A. Yes.

Mr. MANNON.—We offer this in evidence in

(Testimony of J. W. Jory.)

connection with the testimony of this witness, and ask that it be marked Libelant's Exhibit 22.

(The document was marked Libelant's Exhibit 22.)

Q. Will you explain this plan that you made up, Libelant's Exhibit 22, to show how the Cardiff cargo would be taken out, and where you would put that cargo?

A. The red ink represents Cardiff, [514] the green ink represents Hamburg, the blue ink represents Rotterdam. As she loaded up in the Sound first with the lumber cargo, I put 100,000 feet in the bottom of lower hold No. 1 and 100,000 feet in the bottom of lower hold No. 4. That is taking care of 200,000 feet. The surplus I would put up in the bridge-deck space, 26,134 feet in her bridge-deck space. That is the Cardiff lumber. She also had to load in the Sound 76,853 feet of lumber for Rotterdam. I put that in lower hold No. 2, in the bottom. That gives her enough stability to come down the coast. Most likely she was going to take her oil on down here in San Francisco. You wouldn't have to fill her for ballast coming down. If she had this deep tank filled she would come down all right anyhow, with that much lumber. Then in San Francisco I would go to No. 1 hatch and fill up the remainder of my cubic, which would be 3,242 barrels of Cardiff wine on top of the Cardiff lumber. That would finish the lower hold complete. For Hamburg, in the No. 1 'tween-decks, leaving the square of the hatch clear so I could work out

(Testimony of J. W. Jory.)

the Cardiff lumber and the Cardiff wine, I would run the Hamburg wine and the Hamburg barrels of beef and tallow down to the end, about two high, around the after part of the wings, and my cases of herrings in the forward part, right across the ship, thus leaving the square of the hatch clear. Then going to No. 2 hatch, I would load the Rotterdam bean oil and the Rotterdam wine on top of the Rotterdam lumber, making this lower No. 2 complete, finishing up the 'tween-decks full with 2,678 barrels of wine for Cardiff, going all over the hatch, because any leakage over the top of the hatch would not affect anything down here, because it is all barrel cargo anyway. Then going up in the shelter-deck, on top of the lumber I would put 678 barrels of wine in this compartment to take care of any excess that I might find for the other hatches. [515] This was just a rough drawing plan I made up. What was left over I could put up on top of this hatch, so that I would not have to overstow any other cargo. Going into No. 3 lower hold, I would put my 16,586 sacks of rice in the lower hold; that would take up about half of the hatch. Of course I would have a separation there which I would use for grain, or for rice, so in case there were any torn bags when you discharge at Rotterdam it would not go on top of the Hamburg cargo. Then I would place my 4,180 sacks and my 25 tons of general merchandise stowed in the wings on top of that and finish that up. That gives the cubic capacity of that hatch very nearly full.

(Testimony of J. W. Jory.)

That would leave me about 1,000 cubic feet of space in this hatch. Then into No. 3 'tween-decks I would work the barrel wine all around the wings, leaving the hatch clear, here, not because I had to discharge this hatch first, but because I would not stow barrel wine on top of the hatch where I had sack stuff below; in case of leakage through a hatch, it would damage my cargo below, but if it leaks in the 'tween-decks there are scuppers there to take care of it. These scuppers are all inspected. That is one of our duties, to inspect those scuppers; we have to see that the scuppers in the 'tween-decks are clear and free. Then in No. 4 lower hold, on top of the 100,000 feet of lumber loaded in the north, I would finish that hatch up with wine, which would give me 2,286 barrels of wine for Cardiff; then going in the 'tween-deck, in the after section of the 'tween-deck, I would take care of my Rotterdam cases of bean oil, 2,146, against the after bulkhead abaft the hatch. This bean oil we generally have some trouble with; in most cases we have had considerable leakage with the bean oil in cans. The best place for that is in the after part of the ship, where the scuppers are. There is no danger below, because we have no dry perishable cargo at all near it. The remainder of that hatch I would fill up with 1,200 [516] barrels of wine, which would cover up the whole square of the hatch. It could not bother anything going down below, because there are barrels right below, any leakage there would not do any damage.

(Testimony of J. W. Jory.)

The COURT.—Q. That is the 'tween-decks?

A. Yes.

Q. 1,200 barrels of wine for Cardiff? A. Yes.

Mr. MANNON.—Q. You have spoken of these various holds as 1, 2, and the other figures you have named; will you just write there the figures you have been speaking about?

A. Yes. On the stowage plan the Shipping Board puts out, that is designated as the bridge-deck hatch. We speak of 1, 2, 3 and 4 holds. Some of the ships are different.

Q. In your testimony you have been referring to these holds as 1, 2, 3 and 4, haven't you?

A. Yes, as the cubic capacity is outlined according to the Shipping Board scale. We have one little space here, 14,000 cubic feet, called the upper 'tween-deck space; that is alongside the boilers in these ships. You could put some general cargo there. You would not want to put canned goods, or anything that is subject to heat there. I know the 'tween-decks of those vessels.

Q. After you got the vessel loaded, in connection with the way you have testified, indicate to the Court where the space would be left?

A. We would have this compartment, the upper 'tween-deck in the bridge-deck space—that would be 14,635 cubic feet. I didn't use that at all. That is a deep tank; that has no bearing on the case. That ship carries fuel oil in that tank. In some ships they carry cargo there. I would have allowed more space in No. 3 'tween-decks for dry cargo. I

(Testimony of J. W. Jory.)

would allow 5,000 cubic feet for that. That is fair. There is generally about 4,000. This is giving her lots of room for stowage, 15 cubic feet to the barrel for stowage I have given it. [517]

Q. Could you stow that ship in any other way than as indicated on that plan and take out your Cardiff cargo first, your Rotterdam cargo second, and your Hamburg cargo third, and have your ship seaworthy?

A. Yes, we could juggle it around. By moving this into No. 4 and using the forward end; instead of putting that in the last hatch, and putting that in No. 3—I did that so she would not have too much draft on her last part.

Q. Would you have to abide by the particular plan you have laid out in order to accomplish the result, or could you do that in some other way?

A. Yes, I could do it in two or three different ways.

Q. In your business you have to figure out the weights and the cubic capacity, and then you have to put your cargo inside the ship, so that the ship will ride safely? A. Yes.

Q. And you could use some other plan, could you?

A. Yes, I could use three or four different plans.

Cross-examination.

Mr. GRAHAM.—Q. That plan you have drawn up only takes into consideration the fact that you know so much cargo is going on the ship, what the commodities are, and the ports she is going to?

A. Yes.

(Testimony of J. W. Jory.)

Q. If I told you that that ship was loading for three ports, and it was loading over a period of, say, two or three weeks, that might enter into your consideration as to the stowage, might it not?

A. Yes.

Q. So that you would have to know all of the conditions of loading in order to draw up a stowage plan, a competent stowage plan for your ship, wouldn't you? A. Well, no.

Q. You would not? A. No.

Q. You could draw up a competent stowage plan, could you, by just knowing how much cargo she had, what the commodities were, and [518] what ports she was going to?

A. By knowing what port she was going to I could draw up a stowage plan, but I could load her at any time.

Q. You could? A. Yes.

Q. Regardless of when the goods arrived?

A. Regardless of when the goods arrived, except that some demurrage might be put on the cars, and, of course, you would not want that.

Q. You would have to take into consideration the demurrage on the cars, wouldn't you, and tying up the cargo?

A. If we were holding up the cargo we would make some consideration for that, too. With a 'tween-decks ship like that, and the cubic capacity that vessel has, sometimes we will have a car come in and rather than put it in we will knock off the stevedores and round up the cargo in the 'tween-

(Testimony of J. W. Jory.)

decks, and put that down below. You know, it costs something to put on hatches; you have 16 stevedores working there for half an hour, and that doesn't compare with the demurrage on a car with a ship that has lots of cubic, and lots of 'tween deck space, you can juggle it around so you won't have to have any demurrage.

Q. Would not the fact that a vessel was loading for a period of three weeks, loading for three ports, have a great deal to do with your situation?

A. I don't think it would.

Q. You don't think so? A. No.

Q. You think you could make the same stowage and draw the same stowage plan—

A. I don't think I could make the same stowage I have on this plan, but I could make some stowage plan that would take care of her.

Q. In other words, you would juggle it around?

A. Yes, I would juggle it around, the way they do down on these docks every day. We will be called up three or four times a day and asked the [519] question, "Can you put it here"? "Can you put it there?" You have to juggle it around.

Q. As to this vacant space you have indicated on this ship, you don't know whether that was caused by cancellations, or not, do you?

A. No, I do not.

Q. You don't know anything about that?

A. No. I don't know that it was vacant. They might have used it.

(Testimony of J. W. Jory.)

Q. They might have used all the space up on the "West Aleta"?

A. Yes, they might have used it all up. They might have had very poor stowage. I believe that the stevedores strike was on at that time when they were loading those barrels.

Q. So the manner in which they loaded it might have had a great deal to do with whether there was any vacant space, or not? A. Yes.

Q. And the "West Aleta" might have gone out full? A. Yes.

Q. When you drew that plan of yours, you only took into consideration where it was going, didn't you, and the amount of the commodities?

A. Yes.

Mr. MANNON.—That concludes our case. We have already reserved our objections, as we understand it, to that part of the evidence we deem immaterial, particularly to all the parol evidence which has been offered to affect or vary the bill of lading in any way; also certain of the evidence in the agreed statement of facts. I take it that we have not waived our rights in that connection at all.

The COURT.—It is my understanding that you have not.

Mr. MANNON.—That concludes our case.

Mr. GRAHAM.—That concludes our case also, your Honor.

(By consent, the case was thereupon submitted upon briefs to be filed in 15, 15 and 10.)

[Endorsed]: Filed Jan. 17, 1925. [520]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 23d day of September, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—SEPTEMBER 23, 1925—ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANT.

Pursuant to opinion filed in case No. 17,693, ordered that a decree be entered in favor of libelant. [521]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,

Respondent.

No. 17,692.

ROSENBERG BROTHERS & COMPANY,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

No. 18,046.

S. L. JONES & COMPANY, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

Before KERRIGAN, District Judge.

Sept. 23, 1925.

J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, all of San Francisco, Calif., Proctors for Libelants.

Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., both of San Francisco, Calif., for Respondent.

MEMORANDUM OPINION. [522]

These three cases, tried together, are suits brought in the names of the shippers and owners of cargo lost on the S.S. "West Aleta," when that

vessel stranded on Terschelling Island, more than five years ago.

The "West Aleta" left San Francisco with a full cargo on January 6, 1920, libelants' shipments were destined for Cardiff, Wales, and Rotterdam, Holland, and consisted of rice, nutmegs, and 15,000 barrels of wine and brandy. Bills of lading were issued in the usual form, in one case naming San Francisco as the port of departure and Cardiff as that of destination, and in the other cases, San Francisco and Rotterdam as such respective ports. In none of them was any reference made to Hamburg, Germany; but inasmuch as each of the libelants had consigned a shipment to that port, they had actual knowledge that the vessel intended to call there. In each case the opening clause of the bill of lading reads as follows:

> "Received in apparent good order and condition . . . . at San Francisco . . . . to be transported by the ship 'West Aleta' . . . . with leave . . . . *to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port* of Cardiff (Rotterdam) . . . . "

Stamped on the face of the instrument is a clause reserving liberty to deviate for trial trips, and in its main body a clause has been inserted to permit deviations "for the purpose of saving life or property." No other provision is made for deviation from the direct route between San Fran-

cisco and the destination named, which in each case, as stated, was Rotterdam or Cardiff.

For reasons of her own, not amounting to necessity, after proceeding safely through the Panama Canal, and across the Carribean Sea and the Atlantic Ocean to the entrance to Bristol Channel, on which Cardiff is situated, the "West Aleta" proceeded through the Straits of Dover into the North Sea. After passing the entrance to Rotterdam harbor, when about one hundred miles beyond that point she stranded on Terschelling Island, [523] and with her cargo became a total loss. Admittedly, she was on her way to Hamburg, a port 750 miles beyond Cardiff, and 250 miles beyond Rotterdam, intending to visit those three ports in the reverse of their geographical order.

At the time of the wreck the North Sea at the mouth of the Elbe was still dangerous for navigation because of the presence of floating mines. The captain of the "West Aleta" appears to have lost his vessel in an endeavor to avoid areas containing such mines, and to have been guilty of faulty navigation in doing so. For this of course no claim can be made; but for his failure to discharge the Cardiff and Rotterdam cargoes before passing those ports, libelants seek to recover their values, relying on the familiar doctrine of deviation to create an absolute liability, in their favor. It is clear that such a liability must be established if a recovery is to be allowed, for the real parties in interest herein are cargo insurers, who have made full payment of losses under their policies, and now stand

subrogated to the claims of the insured. Each of the bills of lading contains a "Benefit of insurance" clause in favor of respondent. Before, however, it can avail itself of this defense, it has cast upon it the burden of explaining the deviation above described, from the natural, direct, and ordinary route.

Respondent's first contention is, that under the "liberty to call" or "deviation" clause above set forth, the "West Aleta" had a right to make the voyage which she was pursuing at the time of her loss.

While it is true that the right of deviation given by this clause is very broad, it nevertheless is not unlimited. The law has, in fact, attached to it a fixed and certain meaning, older than the oldest American court of admiralty, which limits its application to ports substantially on the course of the voyage described, *between its termini and before the port of destination.* Regarding the rule as settled by earlier cases, more than a century ago Lord Mansfield held a general leave "to touch and stay at any ports and places whatsoever without [524] being deemed a deviation," must be confined to ports "in the course of the voyage" to the destination named in a policy of insurance.

"Though at the trial I was struck with the largeness of these words," said the eminent Judge, "as giving liberty to the ship to go any where she pleases, to any island, in any course, it must be confined to the voyage insured, that is, to some port in the course of the voyage to (the ports of

destination); *otherwise I do not see where the is* to end; they might make it last two years, ... and the larger the words are the more necessary is this construction, else the ship might trade and barter without any termination." (Gardner vs. Senhouse, 3 Taunt. 16; 128 Eng. Rep. 7; italics mine.)

I have been referred to no case in this country which impairs the force of this reasoning. It was accepted in Smith vs. United States Shipping Board Emergency Fleet Corporation (2 Fed. 2d 390), and appears to me to be supported by an almost unbroken line of American decisions. (Ardan S. S. Company vs. Thebaud, 35 Fed. 620; Hurlbut vs. Turnure, 76 Fed. 587; affirmed in 81 Fed. (C. C. A.–2) 208; Swift vs. Furness, 87 Fed. 315; The Blandon, 287 Fed. 722; The Willdomino, 300 Fed. 5.)

In Austrian S. S. Company vs. Calafiore (C. C. A.–5), 194 Fed. 377, a vessel on a voyage from Palermo, Italy, to New Orleans, stopped en route at Tampa, Florida, to take on cargo for the return voyage. As a result of the delay libelant's cargo of lemons was damaged. A clause in the bill of lading gave the carrier "Liberty . . . . to proceed to and stay at, any ports or places whatsoever (although in a direction contrary to, or out of, or beyond, the route to said port of discharge), once or oftener, in any order, backwards or forwards, for the purpose of receiving and for delivering coals, cargo or passengers *or for any other purpose;* and all such ports . . . . shall

be deemed within the intended voyage." A broader right of deviation can scarcely be conceived; yet it was held, and I think rightly, that the ship had not stopped at Tampa for the purposes [525] of the voyage, but for those of *another* voyage, to be undertaken after New Orleans, was reached; that such action was unquestionably beyond the contemplation of the shippers at the time *of* the bill of lading was signed; and that the carrier therefore was liable, although as it will be observed, Tampa was on the course of the voyage named in the bill of lading. This is perhaps the extreme example of Lord Mansfield's rule of construction that "the larger the words are the more necessary" does strict construction become. (Gardner vs. Senhouse, *supra.*)

In the present case respondent's testimony indicates that the principal reason why the "West Aleta" was ordered to take the course which she followed, was convenience of the vessel in loading her return cargo.

Smith vs. United States Shipping Board Emergency Fleet Corporation, *supra*, is very much in point here because it involved claims for the loss of other cargo on the same ship and voyage which gave rise to these suits. The only distinction to be made is that there all of the cargo was shipped to Rotterdam; whereas in the cases at bar the greater part of it (in point of value) was destined for Cardiff, and the deviation attempted was greater by a thousand miles than in that case. Judge Augustus Hand concluded there that "The permission

'to touch at any port or ports in any rotation or order, in or out of the customary route' related to stopping in ports on the way to Rotterdam, either in or out of the geographical order."

This, counsel argue, absolute disregards the phrase "out of the customary route," because without the use of these words a ship might touch at any such port, and such a construction deprives them of all meaning. That the words quoted may be redundant to the power which they purport to enlarge, without in fact enlarging it, must of course be granted. The books are full of cases in which language has fallen short of the meaning which it was intended to express. Certainly the entire clause must be construed with the utmost strictness against the carrier (Poor on Charter Parties and [526] Ocean Bills of Lading, No. 69; The Caledonia, 157 U. S. 124, 137; Pacific Coast Steamship Company vs. Bancroft-Whitney Company (C, C, A–9) 94 Fed. 180, 187), and its meaning may not be extended further than its terms can reach.

Badly stated, it gives permission "to touch at any port or ports . . . . in, or out, of, the customary route . . . . unto the port of Cardiff (Rotterdam) . . . . " The phraseology is not "unto, beyond, and back to the port of Cardiff," but simply "unto the port of Cardiff." To have held that there was no deviation from the agreed voyage, it would have been necessary for Judge Hand to adopt an unduly liberal, not to say strained construction of this language.

The general attitude, both of the English and

American courts, toward exemptions such as the one herein may be seen from a *résumé* of the decisions. It had been held that a carrier cannot escape its obligation by reserving liberty for its vessel to go "to any port in the world," or "to any ports or places whatever" (Gardner vs. Senhouse, *supra;* Clason vs. Simmonds, reported 6 T. R. 531; 101 Eng. Repr. 686; Ardan Steamship Company vs. Thebaud, *supra*); whether "in any order" (Le Duc vs. Ward, 20 Q. B. D. 475; The Wells City, 57 Fed. 317; affirmed in (C. C. A.–2) 61 Fed. 857) or "in any rotation" (Margetson vs. Glynn, (1892), 1 Q. B. 337; (1893) A. C. 351); or whether there be added the phrase "whether in geographical order or not" (White vs. Grenada Steamship Company, 13 Times L. R. 1), or the words "although in a direction contrary to, out, of, or beyond the route to said port of discharge" (Austrian Steamship Company vs. "Calafiore," 194 Fed. 377), or those here used, "in, or out of the customary route." (The Willdomino, 300 Fed. 5; Smith vs. United States Shipping Board Emergency Fleet Corporation, *supra.*) The rule to be deduced from these cases is, that in the absence of unambiguous language to the contrary, a deviation clause invariably must be construed to have reference to a particular voyage between the ports of departure and destination named in a policy or a bill of lading, and to have no application to any port or ports not naturally and usually ports of call on the proposed voyage. (Le Duc vs. Ward, *supra.*) [527] Addition of the words "in, or out of the customary

route" may broaden a carrier's right to deviate; but they will not be construed to authorize the initiation of a new voyage before an old one is completed. (Austrian Steamship Company vs. "Calafiore" (C. C. A.–5), 194 Fed. 377. As was stated by Lord Justice Bankes in the English Court of Appeal less than a year ago, "the decision always has been that the general language of which these cases are illustration must be read as controlled by the governing object of the contract, namely, the persecution of the named voyage . . . . " (United States Shipping Board Emergency Fleet Corporation vs. Bunge and Borne, Ltd., 41 T. L. R. 73; affirming 40 Times L. R. 541 (K. B. D.).)

The only question presented, therefore, is one of fact: whether Hamburg is a port which lies substantially on the course of a voyage from San Francisco to Cardiff or Rotterdam; and this question it is impossible to answer in the affirmative.

The next point made by respondent is that there is a well known and fully recognized custom of the port of San Francisco for vessels engaged in the so-called European-Pacific service with ports of discharge in the Hamburg-Bordeaux range to call at those ports (including Hamburg, Rotterdam, and Cardiff) in any order, without regard to their particular geographical location. In passing on this contention, Judge Hand said as follows: "I cannot say that the business usage, whereby no more than 18 ships at most of the respondent had usually proceeded from the Pacific Coast to Hamburg before discharging at Rotterdam, and had only done this

for a period of about a year, can be regarded as a general and uniform custom having the force of law, of which shippers should take notice." (Smith vs. United States Shipping Board Emergency Fleet Corporation, 2 Fed. (2d) 390, 391.) [528]

It is elementary that a custom or usage, to be binding, must be definite, uniform, and well known. Furthermore, it must be established by clear and satisfactory evidence, so that it may be justly presumed that the parties had reference to it in making their contract. (Bowling vs. Harrison, 47 U. S. (6 How.) 248; The Gualala (C. C. A.–9), 178 Fed. 402.) It must in addition to be shown to be long established, reasonable, and generally acquiesced in (Sweet vs. Leach, 6 Ill. App. 212); requirements which are sustained by all of the authorities. (3 Jones on Evidence, No. 462.) If the proof leaves it uncertain, either as to the fact or as to its effect on the matter with which it is related, it is void. (United States Shipping Board Emergency Fleet Corporation vs. Levensaler, 290 Fed. 297.)

Proof was made at the trial that the European Pacific Line did not commence operations until 1919. During the World War there had been no such service at all. A list of sailings which was produced by respondent, shows that there were not 18 vessels engaged in it, as the court was led to believe in the "West Aleta" case, but only 12. The "Effingham," which left San Francisco on December 17, 1919, went to Hamburg before calling at London and Liverpool, but at the time the "West Aleta" sailed had not yet crossed the Atlantic. The

"Orani," which sailed on October 29, 1919, also departed from the geographical order of call, but touched only at ports in the United Kingdom. The "Cocaponset" commenced its voyage only nine days before the departure of the "West Aleta." Of the nine other vessels listed, three had but one port of destination, and six called at several ports, strictly in their natural geographical order.

On such evidence as this, it is impossible to base a finding that there was a practice for vessels in the European Pacific trade to call at European Continental ports out of their geographical order. Its tendency, if it has one, is to prove an opposite practice. The burden was on respondent to establish by clear and satisfactory evidence a custom [529] at and prior to the time at which arrangements were made with respect to the "West Aleta's" cargo, and evidence of the par practice subsequent to that time is clearly incompetent. No usage, as distinguished from a custom, has been shown; for to be legally recognized a usage must be proved to have been assented to by the parties, and to have been so notorious as to be presumed to have been assented to by them. (2 Williston on Contracts, 1276.) The alleged custom invoked by respondent therefore has not been established by the evidence.

Nor is the point well taken, that libelants knew of the intention of the operators of the "West Aleta" to send her to Hamburg before having her proceed to Rotterdam and Cardiff. If there is any rule of law which is settled beyond contradiction, it is the rule that parol evidence is inadmissible to vary

the terms of a written contract. Except where some custom or usage exists, so well established and generally known that it must be taken to be incorporated with the contract, and at the same time not inconsistent with its clearly expressed terms, such evidence must be disregarded. (Le Duc vs. Ward, *supra*; The Delaware, 81 U. S. (14 Wall.) 579; 3 Jones on Evidence, No. 459.) Objection of the strongest nature has been made to the admission of the evidence of custom just referred to, because the deviation clause is plain and unambiguous, with a clear and settled meaning; and cases have been cited which seem conclusive of its inadmissibility. (Grace vs. American Central Insurance Company, 109 U. S. 278; Portland Flouring Mills Company vs. British and Foreign Marine Insurance Company (C. C. A.–9), 130 Fed. 860; *certiorari* denied, 195 U. S. 629.) Apart from this question, however, we have seen that it was entirely insufficient to establish the alleged custom. The proof offered by the respondent, of other facts and circumstances extraneous to the bill of lading, must therefore be disregarded under the rule of evidence adverted to. In other words, all evidence tending to show that libelants had actual knowledge [530] of the proposed itinerary; all evidence of the contents of the newspaper advertisements published before the vessel sailed; in brief, everything tending to indicate that libelants knew or ought to have known of the course (inconsistent with these bills of lading) which was intended to be taken, must be excluded from consideration. (St. Johns N. F.

Shipping Corporation vs. S. A. Companhia Geral Commercial Do Rio de Janeiro, 263 U. S. 119; The Delaware, 81 U. S. (14 Wall.) 579.)

My attention has been called to Judge Partridge's decision in the case of W. R. Grace & Company vs. Toyen Kishen Kabushiki Kaisha, decided as lately as September 15, 1925, and both parties insist that it is decisive here. While it is true that certain language there employed is favorable to respondent's contentions, I think the reasoning of the opinion distinctly favors the libelants.

That case had to do with a shipment of nitrates from Iquique and Antofagasta, Chile, to Honolulu. The vessel, instead of taking the direct route, proceeded northward, stopping at various ports, to San Francisco, and thence to Portland, Oregon, where she completed cargo. Immediately after leaving that port, she was destroyed by fire, and all her cargo was lost. It was not claimed that she should have taken the direct route. On the contrary, libelant's claim was that the "usual and customary" route was northerly to San Francisco, and *thence* directly to Honolulu. Liability as for a deviation was asserted, in spite of a clause of the bill of lading which gave the carrier "liberty to touch at any port or ports . . . . in or out of the customary route," because of the inclusion of Portland in the vessel's itinerary. Judge Partridge held that there was no such liability, and I may say that I think his decision absolutely correct.

After citing numerous cases, including that of "The West Aleta," in which the doctrine of Glynn

v. Margetson, *supra,* has been followed, he stated that the real intent of the [531] contract between shipper and carrier, with which all deviations must be consistent if they are to be excused by a "liberty-to-all" clause, is the main commercial purpose of that contract, and that accordingly the propriety of any particular deviation is a question of fact in each case, with no fixed rule for its determination. With this there can be no quarrel. Whereas in the case then at bar, there is a well-established custom, of which the shipper has knowledge, for vessels bound for a given destination to proceed upon an indirect route, under the terms of even the narrowest "liberty-to-call" clause there would be no liability for doing so; and whether or not a further deviation from that route would be justified by a clause including ports "in, or out of the customary route" is another question, which was not decided by Judge Partridge, because at the time of shipment in the case before him, as was known both to libelants and the general public, the customary route had been changed so as to include the port in question.

Parol evidence is, as he stated, admissible to show what the usual route is, in interpreting the deviation clause, no matter how great its latitude. But it never is admissible to prove knowledge on the part of, or a parol understanding with a shipper that *the particular vessel* will deviate from the route between its port of departure and destination, for this in effect would be to permit a contradiction of the implied provision of every bill of lading that no deviation inconsistent with its general com-

mercial purpose will be undertaken. (Le Duc vs. Ward, *supra.*) In W. R. Grace & Company vs. Toyen Kisen Kabushiki Kaisha, *supra,* it was not a contradiction of the contract of carriage to permit evidence to be given that four of the respondent's vessels, with the advertised intention of changing the customary route, prior to libelant's shipment had returned via Portland. The fact that libelant had personal knowledge of the intention of the vessel on which his goods were to be carried, to pursue that route, was not essential to the result of the case, and must [532] be regarded as purely accidental except in so far as it goes to show a general knowledge of the change in custom. It may be added that if the mere receipt of notice of an intention to deviate, in a manner inconsistent with the terms of a bill of lading, is sufficient to permit a carrier to do so with impunity, the protection of a written instrument is very slight indeed.

Such being the case, it is apparent under the evidence that in proceeding toward Hamburg, the "West Aleta" was guilty of a deviation which made her owner liable as an insurer for the safety of the cargo. At this point, however, the contention is made by respondent, that it is entitled to the full benefit of the insurance paid to libelants for their losses. The rule is well established that a deviation changes the character of a voyage so essentially that a ship owner who had deviated cannot claim the benefit of the terms of a bill of lading. An unjustifiable deviation vitiates or avoids the contract of carriage, and the failure to comply with

what in effect is a condition or warranty not to deviate displaces it. (The Sarnia, 278 Fed. 459, 463; Thorley vs. Orchis Steamship Company (1907), 1 K. B. 660.) In such circumstances, the carrier cannot escape liability by reason of the relieving clauses which have been inserted in the bill of lading for its benefit. (St. Johns N. F. Shipping Corporation vs. S. A. Companhia Geral Do Rio De Janeiro, *supra,* Pacific Coast Steamship Company vs. Youkon Independent Transportation Company (C. C. A.-9), 155 Fed. 29; Carver on Carriage of Goods by Sea, No. 287.) Since it is not a condition precedent to suit for loss, after deviation, that the cargo owner shall have been deprived of his right against the insurer (The Citta Di Messina, 169 Fed. 472, 475; Smith vs. United States Shipping Board Emergency Fleet Corporation, *supra,* this contention of respondent also must fail.

It is further argued that the United States Shipping Board Emergency Fleet Corporation is only suable as a corporation under the "Suits in Admiralty Act" of 1920, under the provisions of which all rights of action are barred. [533] On exceptions to the libels in these cases, Judge Patridge held that the suits were not barred or effected by the provisions of that act (Rosenberg Brothers & Company vs. United States Shipping Board Emergency Fleet Corporation, 295 Fed. 372), and such was Judge Hand's opinion in "The West Aleta," *supra.* I think the question requires no further discussion.

The final contention that laches are imputable to libelants is without merit, for the reason that

these suits were brought well within the 4-year period of limitations prescribed by the California statute. A court of admiralty sitting in this state will by analogy follow its statutes of limitations (Pacific Coast Steamship Company vs. Bancroft-Whitney Company, *supra*), and according to those there have been no laches here.

As the measure of damages for failure to deliver cargo is the market value of the goods at the port of destination at the time the vessel should have arrived (36 Cy. 275; St Johns N. F. Shipping Corporation vs. S. A. Companhia Geral Do Rio De Janeiro, *supra;* Carver on Carriage of Goods by Sea, 6 ed., No. 727), libelants are entitled to recover the values set forth in the agreed statements of fact. It is therefore ordered that decrees issue in favor of libelant California Wine Association for the sum of $642,871, interest, and costs; in favor of libelant Rosenberg Brothers & Company for the sum of $20,782.79, interest, and costs; and in favor of libelant S. L. Jones & Company for the sum of $4,481.66, interest, and costs.

FRANK H. KERRIGAN,
District Judge.

[Endorsed]: Filed Sep. 23, 1925. [534]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,692.

ROSENBERG BROS. & CO. (a Corporation),
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),
Respondent.

FINAL DECREE.

The above-entitled cause came on regularly for hearing December 29, 30 and 31, 1924, and January 2, 6 and 7, 1925, before Honorable Frank H. Kerrigan, United States District Judge. Libelant appeared by J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, its proctors, and respondent appeared by Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., its proctors.

Evidence oral and documentary was introduced, briefs were filed and the cause was submitted to the Court for decision. The Court being fully advised in the premises filed its decision and opinion herein, holding and deciding that libelant should recover from respondent the sum of Twenty Thousand Seven Hundred Eighty-two and Seventy-nine Hundredths (20,782.79) dollars, together with

interest at the rate of seven (7) per cent per annum thereon from February 15, 1920, which said interest at the date hereof [535] amounts to the sum of Eight Thousand and One Hundred Fifty-four and 80/100 (8,154.80) Dollars, and costs.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant above named, Rosenberg Bros. & Co. (a corporation), do have and recover from respondent, United States Shipping Board Emergency Fleet Corporation (a corporation), the sum of Twenty-eight Thousand Nine Hundred Thirty-seven and 59/100 (28,937.59) Dollars, together with interest thereon at the rate of seven (7) per cent per annum from the date of this decree until paid, together with costs to be hereafter taxed.

Dated this 24th day of September, 1925.

FRANK H. KERRIGAN,
United States District Judge.

Approved as to form, and five (5) days' lodging with the Court waived.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Entered in Vol. 19, Judg. and Decrees, at page 293.

[Endorsed]: Filed Sep. 24, 1925. [536]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

MOTION TO MODIFY FINAL DECREE.

Now comes the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent in the above-entitled matter, appearing by its proctors, Ira S. Lillick and Chalmers G. Graham, and makes this its motion to modify, in the manner hereinafter set forth, the final decree in the above matter entered and filed the 24th day of September, 1925.

Said respondent moves that said decree, now providing for interest at the rate of 7% per annum, be modified and changed to provide for interest at the rate of 4% per annum.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

To Rosenberg Bros. & Co. and to J. M. Mannon, Jr., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Green, Its Proctors:

You and each of you will please take notice that the above-entitled motion will be called for hearing on Saturday, the 24th day of October, 1925, or as soon thereafter as proctors [537] for the respondent may be heard, in the courtroom of the above-entitled court, Postoffice Building, Seventh

and Mission Streets, in the City and County of San Francisco, State of California.

Dated this 23d day of October, 1925.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Receipt of a copy of the within motion and notice is hereby admitted this 23d day of Oct., 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Oct. 23, 1925. [537½]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,692.

MINUTES OF COURT—OCTOBER 26, 1925—ORDER DENYING MOTION TO MODIFY FINAL DECREE.

The motion to modify the decree herein, heretofore heard and submitted, being now fully considered, it is ordered that said motion be and same is hereby denied. [538]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

NOTICE OF APPEAL.

To Rosenberg Brothers & Company, a Corporation, Libelant in the Above-entitled Cause, and to J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division:

You, and each of you, will please take notice, that the United States Shipping Board Emergency Fleet Corporation, respondent in the above-entitled cause, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, in Admiralty, entered in said cause on the 24th day of September, 1925, ordering, adjudging and decreeing that libelant, Rosenberg Brothers & Company, a corporation, recover the amount sued for by reason of the matters alleged in the libel in said cause with interest and costs and finding the amount due to said libelant to be the sum of $28,937.59, with costs, and interest thereon from that date of said decree.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Dated: San Francisco, California, the 9th day of November, 1925. [539]

Due service and receipt of a copy of the within notice of appeal is hereby admitted the 13th day of November, 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,

Proctors for Libelant.

[Endorsed]: Filed Nov. 13, 1925. [540]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

ASSIGNMENTS OF ERROR.

Comes now the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent and appellant in the above-entitled cause (hereinafter termed "Fleet Corporation") and assigns error in the conclusions, findings, proceedings and decree of the District Court, as follows:

I.

That the District Court erred in ordering and entering a decree in favor of Rosenberg Brothers & Company a corporation, libelant and appellee above named against the Fleet Corporation, respondent and appellant above named, for the recovery from said respondent and appellant of the principal sum of $20,782.79, together with interest thereon at the rate of 7% per annum from the 15th day of February, 1920, to the 24th day of Septem-

ber, 1925, in the further sum of $8,154.80, together with interest and costs thereon.

II.

That the District Court erred in not dismissing the libel of Rosenberg Brothers & Company against the Fleet Corporation. [541]

III.

That the District Court erred in holding that the law has attached a fixed and certain meaning to the following liberty to call clause:

> "Received in apparent good order and condition * * * at San Francisco, * * * to be transported by the ship 'West Aleta' * * * *with leave * * * to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port of Cardiff (Rotterdam)* * * ."

IV.

That the District Court erred in holding that under such a clause the vessel did not have the liberty to proceed beyond the port of discharge named in the bill of lading and that the vessel under such a clause is limited in the application of the clause "to ports substantially on the course of the voyage described between its termini and before the port of destination."

V.

That the District Court erred in finding that the principal reason that the "West Aleta" took the course she followed on her voyage was convenience of the vessel in loading return cargo.

VI.

That the District Court erred in holding that the only distinction between the facts in the above-entitled cause and that of Smith vs. U.S.S.B.E.-F.C. (2 Fed. (2d) 390) is that in the present case the greater part of the cargo was destined for Cardiff whereas in that case all of the cargo was shipped to Rotterdam.

VII.

That the District Court erred in holding that the phrase in the bill of lading before the court in this case "out [542] of the customary route" did not extent the liberties otherwise given in the said bill of lading.

IX.

That the District Court erred in holding that the liberties clause herein relied upon must be construed with reference to a particular voyage named in a particular bill of lading which covers only a part of the cargo between the ports of departure and the ports of destination named in the said bill of lading.

X.

That the District Court erred in holding that the voyage described in the said bill of lading was a specific one and covered the shortest geographical distance between the ports of departure and the ports of destination named therein.

XI.

That the District Court erred in holding that the liberties clause herein relied upon had no

application to any port or ports not naturally and usually ports of call on the voyage.

XII.

That the District Court erred in holding that in proceeding on the voyage in which the "West Aleta" was at the time of her loss the vessel was initiating a new voyage before an old voyage was completed.

XIII.

That the District Court erred in holding that the only question present was one of fact, namely: whether Hamburg is a port on the course of a voyage from San Francisco to Cardiff or Rotterdam.

XIV.

That the District Court erred in holding that the [543] custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XV.

That the District Court erred in holding that evidence of the custom was inadmissible, and in excluding the same from consideration.

XVI.

That the District Court erred in holding that the liberties clause is plain and unambiguous, and in holding that the words "out of the customary route" are plain and unambiguous.

XVII.

That the District Court erred in holding that knowledge of the libelant that the "West Aleta"

was to proceed to Hamburg before Rotterdam and Cardiff was unimportant.

XVIII.

That the District Court erred in holding that facts and circumstances extraneous to the bill of lading must be disregarded.

XIX.

That the District Court erred in holding that all evidence tending to indicate that the libelant knew or ought to have known of the course which was intended to be taken by the "West Aleta" must be excluded.

XX.

That the District Court erred in holding that evidence tending to prove knowledge on the part of a shipper that a particular ship will deviate from a route is inadmissible, and in excluding the same from consideration.

XXI.

That the District Court erred in holding that the [544] "West Aleta" deviated in proceeding to Hamburg before she had discharged her Cardiff and Rotterdam cargo.

XXII.

That the District Court erred in holding that the "West Aleta" in so proceeding to Hamburg before discharging her Cardiff and Rotterdam cargo, under the circumstances of this case, made the respondent and appellant an insurer of the said cargo.

XXIII.

That the District Court erred in holding that

the Fleet Corporation was not entitled to the benefit of the insurance paid to Rosenberg Brothers & Company.

XXIV.

That the District Court erred in holding that the custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XXV.

That the District Court erred in holding that a deviation avoids the contract of carriage.

XXVI.

That the District Court erred in holding that it was not a condition precedent to suit for loss against a carrier for deviation that the cargo owner had been deprived of its right against its insurer.

XXVII.

That the District Court erred in not holding that the Fleet Corporation was only suable in admiralty under the provisions of the "Suits in Admiralty Act of 1920."

XXVIII.

That the District Court erred in not holding that the suit of Rosenberg Brothers & Company was barred under the [545] provisions of Section 5 of the Suits in Admiralty Act of 1920.

XXIX.

That the District Court erred in not holding that the suit of Rosenberg Brothers & Company was barred by laches.

XXX.

That the District Court erred in holding that the "West Aleta" was a vessel operated by the Fleet Corporation.

XXXI.

That the District Court erred in awarding the libelant Rosenberg Brothers & Company interest at the rate of 7% per annum.

XXXII.

That the District Court erred after holding that the libelant was entitled to interest, in not awarding the libelant interest at the rate of 4% per annum as provided in Section 3 of the Suits in Admiralty Act of 1920.

XXXIII.

That the District Court erred in not holding that the burden was on the libelant of proving what was the "customary route."

XXXIV.

That the District Court erred in not holding that the burden was on the libelant of proving that the "West Aleta" departed from the "customary route," and in so doing exceeded the privileges given in the liberties clause when she proceeded toward Hamburg as her first port of call.

XXXV.

That the District Court erred in not holding that the libelant herein had failed to prove that the "West Aleta" departed from the customary route. [546]

XXXVI.

That the District Court erred in not holding that under the terms and provisions of Section 3 of

the Harter Act the Fleet Corporation was not an insurer.

XXXVII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted from faults or errors in navigation or in the management of said vessel.

XXXVIII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta, in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted and arose from dangers of the sea and/or other navigable waters and/or acts of God.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant.

Due service and receipt of a copy of the within Assignment of Errors is hereby admitted this 23rd day of December, 1925.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
EDWARD J. McCUTCHEN,
Proctors for Libelant. [547]

[Endorsed]: Filed Dec. 23, 1925. [548]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

STIPULATION EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1925, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause that the time for the filing of the assignment of errors, and apostles on appeal may be, and the same hereby is, extended to and including the 15th day of December, 1925.

EDWARD J. McCUTCHEN.
J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
IRA S. LILLICK.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1925. [549]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,692.

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 4, 1926, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and be-

tween the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same hereby is, extended to and including the 4th day of January, 1926.

McCUTCHEN, OLNEY, MANNON & GREENE.

IRA S. LILLICK.

It is so ordered.

_____,

United States District Judge.

[Endorsed]: Filed Dec. 23, 1925. [550]

In the Southern Division of the United States District Court, for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET, a Corporation,

Respondent.

No. 17,692.

ROSENBERG BROTHERS & COMPANY, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET, a Corporation,

Respondent.

No. 18,046.

S. L. JONES & COMPANY, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET, a Corporation,

Respondent.

STIPULATION AND ORDER RE RECORD ON APPEAL.

IT IS HEREBY STIPULATED by and between the respective parties hereto that the appeals in the above-entitled causes may be heard together upon one and the same record.

IT IS FURTHER STIPULATED by and between the parties hereto that all testimony, depositions and exhibits in the above-entitled causes may be included in one record [551] for the purposes of the appeals in said causes.

Dated the 18th day of November, 1925.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
Proctors for Libelants.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

San Francisco, California, the 18th day of November, 1925.

It is so ordered.

A. F. ST. SURE.
District Judge.

[Endorsed]: Filed Nov. 18, 1925. [552]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,692.

ROSENBERG BROS. & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

No. 18,046.

S. L. JONES & CO., a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

STIPULATION RE TRANSMISSION OF ORIGINAL EXHIBITS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto that all exhibits introduced in evidence in the above-entitled causes in the District Court may be sent up to the United States Circuit Court of Appeals

for the Ninth Circuit in their original form as original exhibits. [553]

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
Proctors for Libelants and Appellees.
IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant.

[Endorsed]: Filed Dec. 30, 1925. [554]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.

No. 17,692.

ROSENBERG BROS. & CO., a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation.
Respondent.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

No. 18,046.

S. L. JONES & CO., a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation.

Respondent.

STIPULATION RE OMISSION OF CERTAIN EXHIBITS FROM TRANSCRIPT ON APPEAL.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause that the agreed statement of facts in the first above-entitled case (No. 17,692) shall, together with all the exhibits attached thereto, be set out in full in the transcript on appeal and shall, together with such exhibits, be printed in full in the record to be prepared by the Clerk of the Circuit Court of Appeals. [555]

IT IS FURTHER STIPULATED AND AGREED that there need not be included in the transcript on appeal, nor in said printed record, certain exhibits attached to the agreed statement of facts in the second above-entitled case (No. 17,693), for the reason that said certain exhibits are identical with certain exhibits attached to the agreed statement of facts in case No. 17,692 as follows, to wit:

Exhibit "A" in case No. 17,693, being identical with Exhibit "A" in case No. 17,692;

Exhibit "B" in case No. 17,693, being identical with Exhibit "B" in case No. 17,692;

Exhibit "E" in case No. 17,693, being identical with Exhibit "E" in case No. 17,692;

Exhibit "F" in case No. 17,693, being identical with Exhibit "F" in case No. 17,692;

Exhibit "G" in case No. 17,693, being identical with Exhibit "G" in case No. 17,692.

IT IS FURTHER STIPULATED AND AGREED that there need not be included in the transcript on appeal, nor in said printed record, certain exhibits attached to the agreed statement of facts in the third above-entitled case (No. 18,046), for the reason that said certain exhibits are identical with certain exhibits attached to the agreed statement of facts in case No. 17,692, to wit:

Exhibit "A" in case 18,046, being identical with Exhibit "A" in case No. 17,692;

Exhibit "B" in case 18,046, being identical with Exhibit "B" in case No. 17,692;

Exhibit "D" in case No. 18,046, being identical with Exhibit "E" in Case No. 17,692; [556]

Exhibit "E" in case No. 18,046, being identical with Exhibit "F" in case No. 17,692;

Exhibit "F" in case No. 18,046, being identical with Exhibit "G" in case No. 17,692.

IT IS FURTHER STIPULATED AND AGREED that the sailing orders attached to respondents' answers to interrogatories propounded by libelant in the first above-entitled case (No. 17,692) shall be included in the transcript and shall be printed in the record to be prepared by the Clerk of the Circuit Court of Appeals, but that the copy of the same document which is attached to the answers of respondents in the second and third above-entitled cases may be omitted, for the reason that the document is identical in each case.

IT IS FURTHER STIPULATED AND AGREED that, in each place where the omission occurs in the transcript on appeal and in the printed record to be prepared by the Clerk of the Circuit Court of Appeals, the reason for the omission shall be noted at the place where such omission occurs and reference made to the page where the identical document appears elsewhere in the transcript.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS,
Proctors for Libelants.
IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

[Endorsed]: Filed Dec. 30, 1925. [557]

In the Southern Division of the United States District Court, Northern District of California, Third Division.

No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation, Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

STATEMENT OF CLERK U. S. DISTRICT COURT.

PARTIES.

Libelant: California Wine Association, a Corp.
Respondent: United States Shipping Board Emergency Fleet Corporation, a Corp.

PROCTORS.

For Libelant: J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and McCutchen, Olney, Mannon & Greene.
For Respondent: Ira S. Lillick, Esq.

PROCEEDINGS.

1922.

Oct. 25. Filed libel, with interrogatories attached. Issued citation, which was returned executed.

1923.

May 10. Filed exceptions to libel. [558]

May 21. Ordered exceptions to libel submitted (Hon. John S. Partridge, Judge.)

Dec. 26. Filed opinion. Ordered exceptions to libel overruled.

1924.

Feb. 19. Filed answer of respondent, with answers to interrogatories propounded to respondent; also, interrogatories propounded to libelant.

Jun. 17. Filed answers to interrogatories propounded to libelant.

Nov. 20. Filed agreed statement of facts.

Dec. 29. Filed deposition of Walter M. Strong.
Hearing issues (Hon. Frank H. Kerrigan, Judge). Hearing resumed on Dec. 30, 31, Jan. 2, 6, and submitted on January 7th, 1925.

1925.

Jan. 17. Filed six volumes of testimony.

Sept. 23. Filed opinion. Ordered decree entered in favor of libelant.

Sept. 24. Filed final decree.

Oct. 23. Filed motion to modify decree.

Oct. 26. Ordered motion to modify decree denied.

Nov. 13. Filed notice of appeal.
Filed bond for costs on appeal.

Nov. 18. Filed stipulation and order regarding record on appeal.

Dec. 11. Filed motion to stay execution.
Filed affidavit of Chalmers G. Graham.

Dec. 14. Ordered motion to stay execution submitted.

Dec. 23. Filed assignment of errors.
Filed praecipe for apostles on appeal.

[559]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

IN ADMIRALTY—No. 17,693.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Respondent.

LIBEL IN PERSONAM.

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court, for the Northern District of California:

The libel of California Wine Association, a corporation, against United States Shipping Board Emergency Fleet Corporation, a corporation, a cause of contract and deviation, civil and maritime, respectfully shows:

FIRST CAUSE OF LIBEL.

I.

That libelant is and at all times herein mentioned

was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue [560] of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business in said state at 369 Pine Street in the City and County of San Francisco.

That at all time herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel.

III.

That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent eleven thousand (11,000) barrels of wine for carriage, by said steamer "West Aleta" as a common carrier of merchandise by sea, upon a voyage to Cardiff, Wales, and delivery there in like good order and condition unto the order of said libelant. That respondent duly received said eleven thousand (11,000) barrels of wine on board said steamer as such common carrier of merchandise by sea and agreed to carry the same by said

steamer to Cardiff, Wales, and there to deliver said wine as aforesaid.

IV.

That respondent duly issued its bills of lading on account of the said shipment on the dates and for the quantities following, to wit:

(1) On the thirty-first day of December, 1919, for fifteen hundred (1500) barrels.

(2) On the thirty-first day of December, 1919, for fifteen hundred (1500) barrels.

(3) On the thirty-first day of December, 1919, for five hundred (500) barrels.

(4) On the thirty-first day of December, 1919, for five hundred (500) barrels. [561]

(5) On the third day of January, 1920, for one thousand (1,000) barrels.

(6) On the third day of January, 1920, for two thousand (2,000) barrels.

(7) On the third day of January, 1920, for three hundred (300) barrels.

(8) On the third day of January, 1920, for one thousand (1,000) barrels.

(9) On the sixth day of January, 1920, for eight hundred (800) barrels.

(10) On the sixth day of January, 1920, for one thousand nine hundred (1,900) barrels.

V.

That the full amount of freight charged and due for said shipment was the sum of one hundred fourteen thousand eight hundred twenty-six and thirty-eight one hundredths (114,826.38) dollars, which sum libelant prepaid.

VI.

That on or about the 6th day of January, 1920, said steamer "West Aleta," having on board said eleven thousand (11,000) barrels of wine, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage to said port of Cardiff, Wales, said vessel, with the knowledge and privity of respondent, and pursuant to respondent's orders and directions, deviated from said voyage and proceeded on an entirely different voyage to the Port of Hamburg, Germany; that during the course of said deviation and after the said steamer "West Aleta" had passed far beyond the said port of Cardiff without entering said port, she stranded upon Terschelling Island (in the North Sea) and became a total loss.

VII.

That by reason of said deviation, stranding and loss of the said steamer "West Aleta" the said eleven thousand (11,000) [562] barrels of wine were totally lost, except a portion thereof which was saved at an expense to the said libelant greater that the value thereof, all to the damage of said libelant in the sum of four hundred fifty-six thousand nine hundred and fifty-five (456,955) dollars.

SECOND CAUSE OF LIBEL.

I.

That libelant is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business in said state at 369 Pine Street in the City and County of San Francisco.

That at all times herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel.

III.

That libelant heretofore, and, to wit, on or about between the 31st day of December, 1919, and the 6th day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent, eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine, for carriage by said steamer "West Aleta," as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said [563] libelant; that respondent duly received said eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine on board said steamer as such common carrier of merchandise by sea, and agreed to carry the same

by said steamer to Rotterdam, Holland, and there to deliver said brandy and wine, as aforesaid.

IV.

That respondent duly issued its bills of lading on account of said shipment on the dates and for the quantities of wine and brandy following, to wit:

(1) On the thirty-first day of December, one thousand nine hundred and nineteen, for one hundred (100) barrels on wine.

(2) On the thirty-first day of December, one thousand nine hundred and nineteen, for five hundred (500) barrels of wine.

(3) On the third day of January, one thousand nine hundred and twenty, for seven hundred and fifty (750) barrels of wine.

(4) On the third day of January, one thousand nine hundred and twenty, for one hundred (100) barrels of wine.

(5) On the sixth day of January, one thousand nine hundred and twenty, for one thousand (1,000) barrels of wine.

(6) On the sixth day of January, one thousand nine hundred and twenty, for five hundred and forty-two (542) barrels of wine.

(7) On the sixth day of January, one thousand nine hundred and twenty, for eight hundred and fifty (850) barrels of brandy.

(8) On the sixth day of January, one thousand nine hundred and twenty, for ninety (90) barrels of brandy.

(9) On the sixth day of January, one thousand

nine hundred and twenty, for one hundred and one (101) barrels of brandy.

(10) On the sixth day of January, one thousand nine hundred and twenty, for sixty-seven (67) barrels of brandy. [564]

V.

That the full amount of freight charged and due for said shipment was the sum of forty-four thousand five hundred and ten and thirty-one one-hundredths (44,510.31) dollars, which sum libelant prepaid.

VI.

That on or about the 6th day of January, 1920, said steamer "West Aleta," having on board said eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage to said port of Rotterdam, Holland, said vessel, with the knowledge and privity of respondent, and pursuant to respondent's orders and directions, deviated from said voyage and proceeded on an entirely different voyage to the port of Hamburg, Germany; that during the course of said deviation and after the said steamer "West Aleta" had passed far beyond the said port of Rotterdam, without entering said port, she stranded upon Terschelling Island (in the North Sea) and became a total loss.

VII.

That by reason of said deviation, stranding and loss of the said steamer "West Aleta," the said

eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine were totally lost, except a portion thereof which was saved at an expense to the said libelant greater than the value thereof, all to the damage of said libelant in the sum of one hundred and eighty-five thousand nine hundred and sixteen (185,916) dollars.

WHEREFORE, libelant prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction and in accordance with acts of Congress in such cases made and provided [565] may issue to and against the said respondent, the United States Shipping Board Emergency Fleet Corporation, citing and admonishing it to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to pronounce for and award to libelant its damages aforesaid, with interest and costs, and will enter a decree for said damages, interest and costs in favor of libelant and against respondent, and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS.
McCUTCHEON, OLNEY, WILLIARD, MANNON & GREENE,
Proctors for Libelant. [566]

State of California,
City and County of San Francisco,—ss.

R. Sciaroni, being first duly sworn, deposes and says:

That he is an officer, to wit, the Secretary of California Wine Association, a corporation, libelant in the above-entitled cause; that said California Wine Association is a corporation duly organized and existing under and by virtue of the laws of the State of California; that affiant makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge of information are documents, correspondence and papers coming to his attention as such officer of said corporation.

R. SCIARONI.

Subscribed and sworn to before me this 18th day of October, 1922.

[Seal] E. COURAY,
Notary Public in and for the City and County of San Francisco, State of California. [567]

INTERROGATORIES ADDRESSED TO RESPONDENT TO BE ANSWERED BY IT UNDER OATH.

First Interrogatory.

Did respondent, or its agents, give the steamer

"West Aleta," or its officers, any sailing orders prior to its departure from San Francisco, California, on or about the sixth day of January, 1920?

Second Interrogatory.

If the answer to the foregoing first interrogatory shall be in the affirmative, attach a true and correct copy of said sailing orders to the answer to these interrogatories.

Third Interrogatory.

Did respondent or its agents at any time or times prior to departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, instructions or directions in writing, other than said sailing orders, respecting the ports of call of said vessel upon the voyage about to be commenced, or respecting the order of calling thereat?

Fourth Interrogatory.

If the answer to the foregoing third interrogatory shall be in the affirmative, attach true and correct copies of all said order, instructions and directions to the answer to these interrogatories.

Fifth Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, directions, or instructions, in any other way than in writing, respecting [568] the ports of call of said vessel upon the

voyage about to be commenced, or respecting the order of calling thereat?

Sixth Interrogatory.

If the answer to the foregoing fifth interrogatory shall be in the affirmative, state fully what all said orders, instructions and directions were.

Seventh Interrogatory.

After the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage or the order of calling at said ports?

Eighth Interrogatory.

If the answer to the foregoing seventh interrogatory shall be in the affirmative, attach true and correct copies of said orders, instructions and directions to the answer to these interrogatories.

Ninth Interrogatory.

After the departure of said vessel from San Francisco, California, on or about the sixth of January, 1920, did respondent or its agents give any orders, instructions or directions in any other way than in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage, or the order of calling at said ports?

Tenth Interrogatory.

If respondent's answer to the foregoing ninth interrogatory shall be in the affirmative, state fully what said orders, instructions and directions were and how given.

Eleventh Interrogatory.

What was the first port of call of said steamer [569] "West Aleta" on the voyage from San Francisco, California, leaving on or about the sixth day of January, 1920?

Twelfth Interrogatory.

To what first port of call was said steamer "West Aleta" bound at the time of her stranding in or about the month of February, 1920?

J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, WILLARD, MANNON, & GREENE.

[Endorsed]: Filed Oct. 25, 1922. [570]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

EXCEPTIONS TO LIBEL.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

Now comes the United States Shipping Board Emergency Fleet Corporation, above-named respondent, appearing herein by its proctor, Ira S. Lillick, and excepts to the libel, and each alleged cause of libel therein contained, on file herein, upon the following grounds:

I.

That neither said libel, nor either of the alleged causes of libel set forth therein, state facts sufficient

to constitute a cause of libel against respondent herein. [571]

II.

That neither said libel, nor either of the alleged cause of libel set forth therein, state facts sufficient to confer jurisdiction upon this Court, and said Court is without jurisdiction of the matters contained in said libel, and each count thereof.

Further excepting to said libel, and particularly to the first alleged cause of libel therein contained, respondent specifies:

I.

That said first alleged cause of libel fails to state facts sufficient to constitute a cause of libel against respondent herein.

II.

That said alleged cause of libel fails to state facts sufficient to confer jurisdiction upon this Court, and said Court is without jurisdiction over the matters contained therein.

III.

That said alleged cause of libel fails to allege that the steamship "West Aleta" was employed, and/or operated, as a merchant vessel at the time of the filing of said libel, or at the commencement of the said cause of action therein contained.

IV.

That at the time of the filing of said libel herein, the steamship "West Aleta" was not within the Northern District of California, nor within the jurisdiction of this Court. [572]

V.

That at the time of the filing of this libel herein,

the Steamship "West Aleta" was not within the territorial limits of the United States, nor of its possessions, nor within the jurisdiction of this Court.

VI.

That at the time of filing of said libel herein, more than one year had elapsed since the coming into effect of that certain Act of Congress, known as Suits in Admiralty Act, March 9, 1920, and particularly Section 5 thereof, and that by and under the provisions of said Act, the said alleged causes of libel set forth in said libel, and each thereof, are barred.

VII.

That said libel, and particularly the first count thereof, is insufficient, in the following:

(a) That it cannot be ascertained from Article III therein contained upon what route respondent agreed to carry, and/or transport, the merchandise specified therein to Cardiff, Wales.

(b) That it cannot be ascertained from Article VI therein contained what voyage is meant by the agreed voyage to said port of Cardiff, Wales.

(c) That it cannot be ascertained from Article VI therein contained whether or not the port of Hamburg, Germany, was a port of call, to which said Steamer "West Aleta" was privileged to call on the voyage agreed upon in the bill of lading. [573]

Further excepting to said libel, and particularly to the second alleged cause of libel therein contained, respondent specifies:

I.

Said respondent hereby refers to paragraphs I, II, III, IV, V and VI of its exceptions to the first alleged cause of libel herein contained, and incorporates each and all of said paragraphs, as though fully set forth herein.

II.

That said libel, and particularly the second cause thereof, is insufficient, in the following:

(a) That it cannot be ascertained from Article III therein contained what route respondent agreed to carry and/or transport the merchandise therein specified to Rotterdam, Holland.

(b) That it cannot be ascertained from Article VI therein contained what voyage is meant by the agreed voyage to said port of Rotterdam, Holland.

(c) That it cannot be ascertained from Article VI therein contained whether or not the port of Hamburg was a port of call, to which said steamer "West Aleta" was privileged to call on the voyage agreed upon in the bill of lading.

WHEREFORE, respondent prays that said libel herein be dismissed, and that respondent have judgment for its costs of suit herein.

IRA S. LILLICK,
Proctor for Respondent.

Receipt of a copy of the within exceptions to libel is hereby admitted this 10 day of May, 1923.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctor for Libelant.

[Endorsed]: Filed May 10, 1923. [574]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 26th day of December, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM H. HUNT, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 26, 1923—ORDER OVERRULING EXCEPTIONS TO LIBEL.

Pursuant to opinion this day filed in the cause of Rosenberg Bros. & Co., etc., vs. United States Shipping Board Emergency Fleet Corp., a Corp., No. 17,692, IT IS ORDERED that the exceptions to the libel heretofore submitted herein be and the same are hereby overruled, with 10 days allowed to answer. [575]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 17,693.

ANSWER.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

The answer of United States Shipping Board Emergency Fleet Corporation, a corporation, re-

spondent herein, in a cause of contract, civil and maritime, admits, denies and alleges, as follows:

I.

Answering unto Articles I and II of the first alleged cause of libel, respondent admits the allegations therein contained.

II.

Answering unto Article III of the said first alleged cause of libel, and particularly unto the allegation therein that on or about between the 31st day of December, 1919, and the 6th day of January, 1920, California Wine Association, a corporation, delivered in good order and condition at San Francisco, California, [576] 11,000 barrels of wine for carriage by the steamer "West Aleta," as alleged therein, respondent is ignorant so that it can neither deny nor admit the same, wherefore it calls for strict proof, if relevant.

Said respondent denies that said 11,000 barrels of wine, or any of them, were delivered in good order, and/or condition aboard the steamer "West Aleta," but alleges that it was agreed, under the terms of the bill of lading, that said 11,000 barrels of wine were shipped in apparent good order and condition on board the steamer "West Aleta," and not otherwise.

Respondent denies that said 11,000 barrels of wine were to be transported, and/or delivered, in like good order, and/or condition, as alleged in said article, but in this behalf admits the 11,000 barrels of wine were to be carried upon the said Steamer and delivered at the port of Cardiff, Wales, in accordance with the terms and conditions of cer-

tain bills of lading issued for said shipment, and that, among other things, said bills of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in the said bills of lading at the Port of Cardiff, Wales.

III.

Answering unto Article IV of the said first alleged cause of libel, respondent admits the issuance of its bills of lading on account of said shipments on the dates and for the quantities as alleged in the article, but in this behalf respondent refers to the said original bills of lading and demands that the libelant be required to produce said bills of lading upon the trial.

IV.

Answering unto the allegations of Article V of the said first alleged cause of libel, respondent admits the same. [577]

V.

Answering unto Article VI of the said first alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the steamer "West Aleta'" having on board the said 11,000 barrels of wine sailed from the port of San Francisco, California, but denies that pursuant to respondent's order, and/or directions, and/or otherwise, and/or at all, that said steamer "West Aleta" deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different voyage to the port of Hamburg, Germany, but in this behalf respondent alleges that

by and under the terms and conditions of the bills of lading it was agreed, among other things, that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

VI.

Answering unto Article VII of the said first alleged cause of libel, respondent denies that the said 11,000 barrels of wine were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but in this behalf respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in the said article, respondent alleges that it has no knowledge or information sufficient [578] to enable it to answer the same, so that it can neither admit nor deny said allegations, and therefore calls for strict proof thereof, if relevant.

VII.

Further answering said libel, and particularly the first alleged cause of libel, respondent alleges that at all of the times in the libel mentioned, prior

to said stranding, due diligence had been exercised to make the said steamer "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, and the said steamer was at all of the said times in fact in all respects seaworthy and properly manned, equipped and supplied.

VIII.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent alleges that, among other things, in and by the terms of said bills of lading, it was mutually agreed that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once," and in this behalf respondent alleges that at the time of the said stranding of the steamer "West Aleta" upon Terschelling Island, the said steamer was en route to the port of Hamburg, Germany, as a regular port of call under and by virtue of the terms of the bill of lading herein, and as a further and separate defense, said bill of lading further provides, in part, as follows:

"Clause 2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100.) as the weight of such fraction bears to

one short ton) [579] each short ton that is shipped being represented and agreed by the shippers as being of no greater value than One Hundred Dollars ($100.) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper, and a bill of lading given and agreed therefor stating such greater value."

"Clause 8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting *from faults or errors in navigation,* or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from

unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness."

"Clause 10. Also, that in case the carrier is liable for loss or damage to any [580] goods or merchandise under this bill of lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in

part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or *if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery.* No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or *if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.*"

"Clause 11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any *insurance* that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods."

"Clause 14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and

capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise."

IX.

Further answering unto said libel, and as a separate defense thereto, respondent alleges that any damage to, or loss of [581] cargo was caused by one or more, and/or combination of two or more of the risks, and/or perils excepted in said bill of lading, and/or by the provisions of the Act of Congress of the United States, approved February 13, 1893, commonly know as the Harter Act.

X.

Further answering said first alleged cause of libel, respondent alleges that no value greater than $100.00 for any one package, and/or for each short ton, or fraction thereof, was stated by the shipper, nor was there any agreement stating any greater value.

XI.

Further answering said first cause of libel, and as a separate defense thereto, respondent alleges that no claim was presented in writing within the time limited in Clause 10 of the bill of lading, nor was any suit commenced under the bill of lading, or in respect of said shipment of goods, within the time limited in Clause 10 of the bill of lading, under which said goods were shipped and that, by reason thereof, any claims under said bills of lading, or in respect of said goods, were waived,

and became barred, and the carrier was discharged therefrom.

XII.

Further answering said alleged first cause of libel, respondent alleges that the said 11,000 barrels of wine were insured, and respondent claims the benefit thereof, and such deduction from any claim herein as is equal to the amount of any payment or loan made in respect of said shipment of wine by reason of any such insurance.

XIII.

Further answering unto said first alleged cause of libel, respondent hereby refers to the bills of lading under which [582] said goods were shipped, and prays that the libelant be compelled to produce the same at trial, and refers to each and all of the terms and conditions of said bills of lading, as though said bills of lading were attached hereto, and made a part hereof.

XIV.

Further answering said alleged first cause of libel, and as a separate defense thereto, respondent alleges that it did not agree to carry said 11,000 barrels of wine on any particular route, and/or to any port of call in any particular order and, in this behalf alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order in or out of the customary route."

SECOND CAUSE OF LIBEL.

I.

Answering unto Article III of the said second alleged cause of libel, respondent admits the allegations therein contained.

II.

Answering unto Article III of the said second alleged cause of libel, and particularly unto the allegation therein that on or about between the 31st day of December, 1919, and the 6th day of January, 1920, California Wine Association, a corporation, delivered in good order and condition at San Francisco, California, 1108 barrels of brandy and 2992 barrels of wine for carriage by the steamer "West Aleta," as alleged therein, respondent is ignorant so that it can neither deny nor admit the same, wherefore it calls for strict proof, if relevant.

Said respondent denies that said 1108 barrels of brandy and 2992 barrels of wine, or any of them, were delivered in good order, and/or condition, aboard the Steamer "West Aleta," but [583] alleges that it was agreed, under the terms of the bill of lading, that said 1108 barrels of brandy and 2992 barrels of wine were shipped in apparent good order and condition on board the steamer "West Aleta," and not otherwise

Respondent denies that said 1108 barrels of brandy and 2992 barrels of wine were to be transported, and/or delivered, in like good order, and/or condition, as alleged in said article, but in this behalf admits that 1108 barrels of brandy and

2992 barrels of wine were to be carried upon the said steamer and delivered at the port of Rotterdam, Holland, in accordance with the terms and conditions of certain bills of lading issued for said shipment, and that, among other things, said bills of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in the said bills of lading at the port of Rotterdam, Holland

III.

Answering unto Article IV of the said second alleged cause of libel, respondent admits the issuance of its bills of lading on account of said shipments on the dates and for the quantities as alleged in the article, but in this behalf respondent refers to the said original bills of lading and demands that the libelant be required to produce said bills of lading upon the trial.

IV.

Answering unto the allegations of Article V of the said second alleged cause of libel, respondent admits the same.

V.

Answering unto Article VI of the said second alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the steamer "West Aleta" having on board the said 1108 barrels of brandy and 2992 barrels of wine sailed from the port of San Francisco, California, but denies that pursuant to respondent's [584] order, and/or directions, and/or otherwise, and/or

at all that said steamer "West Aleta," deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different voyage to the port of Hamburg, Germany, but in this behalf respondent alleges that by and under the terms and conditions of the bills of lading it was agreed, among other things, that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

VI.

Answering unto Article VII of the said second alleged cause of libel, respondent denies that the said 1108 barrels of brandy and 2992 barrels of wine were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but in this behalf respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in the said article, respondent alleges that it has no knowledge or information sufficient to enable it to answer the same, so that it can neither admit nor deny

said allegations, and therefore calls for strict proof thereof, if relevant.

VII.

Further answering unto the said second alleged cause of libel, and as further and separate defenses thereto, respondent [585] herein repeats and hereby makes a part of this answer as fully as if set forth at length herein all of the allegations of Articles VII, VIII, IX, X, XI, and XIII of the answer to the first alleged cause of libel herein.

VIII.

Further answering said alleged second cause of libel, respondent alleges that the said 1108 barrels of brandy and 2992 barrels of wine were insured, and respondent claims the benefit therof, and such deduction from any claim herein as is equal to the amount of any payment or loan made in respect of said shipment of brandy and wine by reason of any such insurance.

IX.

Further answering said alleged second cause of libel, and as a separate defense thereto, respondent alleges that it did not agree to carry said 1108 barrels of brandy and 2992 barrels of wine on any particular route, and/or to any port of call in any particular order and, in this behalf alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order in or out of the customary route."

WHEREFORE, respondent prays that said libel may be dismissed and for its costs herein.

IRA S. LILLICK,
Proctor for Respondent. [586]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, The District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such is authorized to make this verification; that he has read the foregoing answer to the libel herein and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California. [587]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANT TO RESPONDENT.

Answer to Interrogatory No. 1: Yes.
Answer to Interrogatory No. 2: Attached.
Answer to Interrogatory No. 3: No.
Answer to Interrogatory No. 4: None given.
Answer to Interrogatory No. 5: No.
Answer to Interrogatory No. 6: None.
Answer to Interrogatory No. 7: No.
Answer to Interrogatory No. 8: None.
Answer to Interrogatory No. 9: No.
Answer to Interrogatory No. 10: None.
Answer to Interrogatory No. 11: Balboa, Canal Zone.
Answer to Interrogatory No. 12: Hamburg, Germany.

IRA S. LILLICK,
Proctor for Respondent. [588]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such is authorized to make this verification; that he has read the foregoing answers

to interrogatories propounded by libelant to respondent herein and knows the contents thereof and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California. [589]

INTERROGATORIES DIRECTED TO LIBELANT TO BE ANSWERED BY IT UNDER OATH.

Interrogatory No. 1: Was any insurance carried upon the said 11,000 barrels of wine, and/or the said 1108 barrels of brandy, and/or the said 2992 barrels of wine, or any part thereof, herein?

Interrogatory No. 2: If so, attach copy of insurance policy.

Interrogatory No. 3: Has any insurance been paid on account of the loss, and/or damage, to the said 11,000 barrels of wine, and/or the said 1108 barrels of brandy, and/or the said 2992 barrels of wine, herein?

Interrogatory No. 4: If so, how much and to whom have said payments been made?

Interrogatory No. 5: Has any loan been made on account of the loss, and/or damage, to the said 11,000 barrels of wine, and/or the said 1108 barrels

of brandy, and/or the said 2992 barrels of wine, herein?

Interrogatory No. 6: If so, how much and to whom have the said loans been made?

IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Feb. 19, 1924. [590]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

ANSWERS TO INTERROGATORIES PROPOUNDED BY RESPONDENT TO LIBELANT.

Answer to interrogatory No. 1: Yes, insurance was carried upon said 11,000 barrels of wine and 1,108 barrels of brandy and 2,992 barrels of wine.

Answer to Interrogatory No. 2: Said insurance was covered by policy No. 641,422 issued by Fireman's Fund Insurance Company, and dated January 23, 1920. Said policy was in the usual form employed by said Insurance Company, and covered the usual risks. Libelant offers to permit respondent to inspect the said original policy at any time upon request.

Answer to Interrogatory No. 3: Yes.

Answer to Interrogatory No. 4: $642,871, paid to California Wine Association, libelant herein.

Answer to Interrogatory No. 5: No.

Answer to Interrogatory No. 6: None.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [591]

State of California,
City and County of San Francisco,—ss.

R. Sciaroni, being first duly sworn, deposes and says:

That he is an officer, to wit, the secretary, of California Wine Association, a corporation, libelant in the above-entitled cause, and makes this verification for and on behalf of the libelant for the reason that it is a corporation, as aforesaid; that he has read the foregoing answers to interrogatories propounded by respondent to libelant herein and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

R. SCIARONI.

Subscribed and sworn to before me this 5th day of June, 1924.

[Seal] JAMES ULARAN,
Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answers to Interrogatories

and receipt of a copy is hereby admitted this 11 day of June, 1924.

IRA S. LILLICK,
Proctor for Respondents.

[Endorsed]: Filed Jun. 17, 1924. [592]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that the following facts are true and that said facts shall be deemed proved at any trial or trials of said cause without the necessity of any evidence other than this stipulation, to wit:

(1) That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent eleven thousand (11,000) barrels of wine for carriage, by said steamer "West Aleta" as a common carrier of merchandise by sea, upon a voyage to Cardiff, Wales, and delivery there in like good order and condition unto the order of said libelant. That respondent duly re-received said eleven thousand (11,000) barrels of wine on board said steamer as such common carrier of merchandise by sea and agreed to carry the same by said steamer to Cardiff, Wales, and there to deliver said wine [593] as aforesaid.

(2) That libelant heretofore and, to wit, on or about between the thirty-first day of December, 1919, and the sixth day of January, 1920, delivered in good order and condition at San Francisco, California, to respondent, eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2992) barrels of wine, for carriage by said steamer "West Aleta," as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant; that respondent duly received said eleven hundred and eight (1108) barrels of brandy and two thousand nine hundred and ninety-two (2,992) barrels of wine on board said steamer as such common carrier of merchandise by sea, and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said brandy and wine, as aforesaid.

(3) That at the times herein mentioned the steamer "West Aleta" was owned by the United States of America and was documented in the name of the "United States represented by United States Shipping Board." Prior to the times mentioned in the libel the respondent entered into contracts with Messrs. Williams, Dimond & Company for the management and operation of said steamship, copies of which managing agreement and operating agreement are hereto annexed and marked, respectively, Exhibit "A" and Exhibit "B." During all the times mentioned in the libel said steamship was operated and managed under said agreements. [594]

(4) That the bills of lading issued with respect to the carriage of the wine described in paragraph (1) hereof were all in the form of Exhibit "C" attached hereto, except as to date, quantity, description of goods and freight charges, and this shall be deemed sufficient showing of all of said bills of lading as requested by respondent.

(5) That the bills of lading issued with respect to the carriage of the wine and brandy described in paragraph (2) hereof were all in the form of Exhibit "D" hereto attached, except as to date, quantity, description of goods and freight charges, and this shall be deemed sufficient showing of all of said bills of lading as requested by respondent.

(6) That the steamship "West Aleta" loaded and carried approximately two thousand six hundred thirty-four (2,634) tons of cargo destined for Cardiff, Wales, one thousand five hundred three (1,503) tons of cargo destined for Rotterdam, Holland and six hundred sixty-one (661) tons of general merchandise destined for Hamburg, Germany. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower holds and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent.

(7) That at all of the material times herein due diligence was exercised to make the steamship "West Aleta" in all respects seaworthy and properly manned, equipped and supplied.

(8) That from December 4, 1919, to January

sixth, 1920, inclusive, an advertisement, a copy of which is hereto [595] annexed, marked Exhibit "E," and hereby made a part hereof, appeared daily in the "Daily Commercial News of San Francisco," and on and between the same dates, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "F" and hereby made a part hereof, appeared daily in "The Guide," a leading commercial paper of San Francisco.

(9) That no greater value than that mentioned in Clause 2 and/or Clause 3 of the said bill of lading was stated by the shippers, nor was any bill of lading given and agreed therefor stating a greater value.

(10) That the steamship "West Aleta" sailed from San Francisco, California, on January sixth, 1920, having on board all the wine described in paragraph (1) hereof and all the wine and brandy described in paragraph (2) hereof. That in accordance with orders issued to the master, the vessel proceeded by the direct route from the Pacific Coast to the port of Hamburg via the Panama Canal. The course of the vessel and the circumstances of stranding are shown in a copy of the master's extended protest hereto attached, marked Exhibit "G" and hereby made a part hereof. That on the 12th day of February, 1920, at approximately two twenty-eight o'clock A. M., the said vessel stranded and was wrecked on Terschelling Island in the North Sea, and, with all her cargo, she became a total loss. All the wine described in paragraph (1) hereof and all the wine and brandy

described in paragraph (2) hereof, was totally destroyed as a result of the stranding and wreck of said steamship as aforesaid. [596]

(11) That the only ground upon which libelant asserts claim against respondent is upon the ground of improper deviation.

(12) If instead of proceeding toward Hamburg as her first port of call the steamer "West Aleta" had proceeded directly to the port of Cardiff as her first port of call, she would have arrived at Cardiff on or about the tenth day of February, 1920. The market value of the wine described in paragraph (1) hereof at Cardiff, Wales, on or about February tenth, 1920, was the sum of four hundred fifty-six thousand nine hundred fifty-five (456,955) dollars.

(13) If instead of proceeding toward Hamburg as her first port of call the steamer "West Aleta" had put into Cardiff as her first port of call, and there discharged cargo, and then proceeded to the port of Rotterdam, as her second port of call, she would have arrived at Rotterdam on or about the fifteenth day of February, 1920. The reasonable value of the wine and brandy described in paragraph (2) hereof at Rotterdam, Holland, on or about February fifteenth, 1920, was the sum of one hundred eighty-five thousand nine hundred sixteen (185,916) dollars.

(14) That no claims in writing with respect to the matters involved herein were made, nor was this libel filed within nine (9) months after re-

spondent received the goods described in paragraph (1) and (2) hereof.

(15) That in stipulating the facts herein the respective parties do not concede the relevancy or materiality of any fact so stipulated.

(16) That either party may offer evidence upon [597] matters deemed pertinent and not covered by this stipulation.

Dated: San Francisco, California, November 19th, 1924.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent. [598]

[Endorsed]: Filed Nov. 20, 1924. [603]

"EXHIBIT C"

4

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

Received in apparent good order and condition, from CALIFORNIA WINE ASSOCIATION

at SAN FRANCISCO, CAL. , master of steamer as mentioned below (weight, quality, contents and value unknown) to be transported by the ship "THOS AINSWORTH", now at or to arrive at the port of shipment, to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with liberty and with or without pilots, to tranship to any other vessels operated by said corporation, or said Board, or for the account, to lighter from vessel to vessel and from vessel to shore, to touch and stay at any port or ports, in any rotation or order in, or out of, the customary route and to sail at any part or parts more than once, unto the port of GARDIFF for one or more charters as the vessel may safely get, and there deliver in like apparent good order and condition, at the vessel's option, unto CHOSEN-MOFFETT, YOUNG & WISE LTD. CARDIFF, Wales or assigns, freight being paid as hereinafter set forth, they paying average unreleased (if any incurred).

Marks and Nos.	Packages	Contents	Gross Weight
I W CARDIFF #29601/31500	1900 Bols.	CAL. WINE (Serial No.29601/31500)	
		The vessel shall have liberty to deviate for the purpose of making trial trips and shall pay any reasonable increased cost of cargo insurance if any, incurred in consequence thereof.	

Freight Charges 730,208 Lbs. (Actual weight) GWT.

730,208 Lbs. at $2.10 per 100 Lbs. $15,384.40

Freight payable as per charter-party dated ... Freight to be considered fully earned and not to be repaid to shipper, even if there be a vessel lost or abandonment of the goods or any part thereof, and whether the ship or vessel performs the voyage or not, and whether the goods be lost or not during the voyage, or at the port of loading, a part of discharge, the port of delivery of any other port into which the ship may put or be found, whether even if the vessel or goods be lost, during the voyage or any stage of the same, whether other goods be substituted with the vessel, without negligence or with negligence in navigation or management of the vessel, and the general average, and all the provisions of any of the conditions herein mentioned this said vessel is to have the right to forward the above-mentioned cargo to the port of destination by any other steamer or steamers whether belonging to the Government of the United States or not, and whether under United States or foreign registry, whether employed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, and in case of damage during transhipment or transport during the voyage by a vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage thereon shall be paid for as fully as if such forwarding vessel or vessels belonged to private individuals or a private corporation.

If it reasonably appears that any ship may be lost or not reach the port of destination, or be seized or detained during the voyage by reason of blockade or any kind of hostile action, or by reason of infection, quarantine or the like, or that it may be unsafe or inadvisable to proceed to the port of destination, the master may discharge the goods at any port which he may deem safe and proper, or may return the goods to the port of shipment at the expense of the respective interests, and such action shall be deemed a due performance of this contract. Delivery or tender of delivery at any such port or place, or the return of the goods, shall be deemed completion of the voyage, and the freight shall be earned as if the goods had been delivered at the port of destination. The master may employ tugs and other vessels and use the ordinary methods to enter and leave any port or place of loading or discharge, and shall not be responsible for any damage that may be done to the goods or to any vessel, craft, lighter or raft, in consequence thereof.

It is mutually agreed that the owner shall not be liable for loss or damage occasioned by causes beyond the control, or by the perils of the sea or other waters, or by any defect in hull, machinery or appurtenances, by negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner or operator of the ship (not considered, however, as such while employed by the navigation

Kinsley Gardner 1000 bbls. Flour or Stronger Wheat Alpha" to Young & Wile, 100
CALIFORNIA WINE ASSOCIATION OF S. F., 100

ADDITIONAL STIPULATIONS AND AGREEMENTS OF THIS BILL OF LADING

IT IS ALSO MUTUALLY AGREED:

1. That the carrier shall not be liable for articles excepted in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof be given at the time of taking and entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and) for each fraction of one short ton lost or damaged or delayed an aliquant such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton; such short ton that is shipped being represented and agreed by the shipper as being of no greater value than One Hundred Dollars ($100.00) (unless a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or such shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed thereby stating such greater value.

3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, such package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed thereby stating such greater value.

4. Also, that the shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be landed short or torn, the consignee shall accept such proportion of the consignee as shall be allotted by the agents of the carrier, and the same shall be deemed a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, surf, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a notice being put into the post office addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the master or the carrier shall have the right under any and all circumstances, at his option, and without notice, to transship the goods at carrier's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods and if this in his judgment is impedient, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, on the authorities of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, & if hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignees by day and by night as fast as the vessel can deliver, consignees paying all loading charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in any event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the delivery of the goods. No claim arising under this Bill of Lading is valid unless made in writing by consignee to carrier's agent at the port of discharge, if for matters discoverable in all or in part before opening the packages before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for nondelivery, after nine months from the voyage thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loss is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are shipped in receptacles of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper to be such as is solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignees shall accept such proportion of the oil or other fluid which has leaked from its receptacles (and from any other receptacles on said vessel containing oil or other fluids) and can into the bilges, or elsewhere, as may be allotted by the carrier or his agents, and such allotment shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of conveying, or causes to passengers, of loading or unloading, or re-ding or receiving of goods, licensed by the carrier, shall be repaid to the carrier by the shipper, and the carrier shall have a lien for such charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligent, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Revised Statutes, 4281 to 4289, and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc." Provided that in all cases where merchandise or property is transported under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States or America against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipments shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as herein null and expunged, and all provisions herein shall be construed in connection with the provisions of said Act and be valid as far as consistent therewith.

16. Also, that as to all goods landed at Manila or at other Philippine ports, the cargo, in accordance with the regulations of the Philippine's customs service, is to be conveyed, by the ship's agents, at consignee's risk and expense, from the steamer to the Custom House wharf, and there delivered into the custody of the United States Custom House, for account of the consignee; and such delivery shall constitute a full discharge of the carrier's obligation, under this Bill of Lading, unless it be made to appear that exception was taken to the sufficiency of the delivery, by the customs authorities or employees when the goods were delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignees or their agents, in writing, to the ship's agents at Manila, within ten days after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, agents or master shall be liable therefor.

17. Also, that if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1896.

18. Also, that if the shipment hereunder is made at an Australian port, this Bill of Lading is to be used and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been struck out and eliminated therefrom prior to the execution thereof, and is hereby subject to all the terms and provisions of and to all the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean Ocean port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or on immediate out forth or transship.

20. Also, that the carrier shall not be responsible on shipments of bundles, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, flaws or discolorations.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims in any way thereto arising hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail where in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this Bill of Lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

"EXHIBIT D"

Form 33, S. F.
11-10-6m22

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

14

Received in apparent good order and condition, from CALIFORNIA WINE ASSOCIATION
at SAN FRANCISCO, CAL., marked and numbered as below (weight, quality, contents and value unknown) to be transported by the ship "ERIC ALSTA", now at or to arrive at the port of shipment, to be carried upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with leave to sail with or without pilots, to tranship to any other vessels operated by said corporation, or said Board, or for its account, to lighter from vessel to vessel and from vessel to shore, to tranship either by rail, lighter or otherwise, to transfer to and from hulk, and to touch at any port or ports, in any rotation or order in, or out of, the customary route and to sail at any part or ports more than once, with the goods of ROTTERDAM (or as near thereto as the vessel may safely get), and there deliver in like apparent good order and condition, at the vessel's tackles, unto ORDER—NOTIFY YOUNG & WILE LTD. ROTTERDAM Holland or assigns, freight being paid as hereinafter set forth, they paying average accustomed (if any incurred).

Marks and Nos.	Packages	Contents	Gross Weight
W ROTTERDAM	650 Pkgs. BRANDY	The vessel shall have liberty to call at any port or ports for any purpose and engage in any trade, and render assistance, or deviate for the purpose of saving life or property, and to tranship the goods or any part thereof.	

Freight Charges 354,107 Lbs. (Actual weight)

354,107 Lbs. at $2.35 per 100# $8321.51

Rates, weight and/or measurement subject to correction.

Prepaid freight to be considered all earned and not to be repaid to shipper, even if there be a forced interruption or abandonment of the voyage at any port whatsoever, a port of distress, the port of delivery or any other port into which the ship may put or be taken, and/or even if the vessel or goods be lost, delayed or damaged as to part or whole of the entire transit, and/or after goods be unloaded from the vessel, without negligence in navigation or management of the vessel, and notwithstanding in Collision Damages and on the happening of any of the contingencies herein mentioned the said vessel is to have the right to forward the above-mentioned cargo to the port of destination, and there deliver upon compensation for such service, whether performed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, or those of strangers; and in case of salvage services rendered to aforesaid merchandise or treasure during the voyage by a vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage services shall be paid for as fully as if such salvaging vessels belonged to strangers.

It is mutually agreed that the ship shall have liberty to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the ordinary course of her voyage, or should the goods or any part of them be shut out from said vessel, that the carrier is authorized but not compelled to forward or tranship the goods to their destination by any other vessel, steam, motor or sail, at shipper's risk.

It is also mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond its control, or by the perils of the sea or other waters, by the acts, neglect or whosoever occurring, by barratry of the master or crew by mutinies, pirates or robbers, by pillage, by arrest and restraint of princes, rulers or people, riots, strikes or stoppages of labor, by explosion, or bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collision, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the shipowner or operator of the ship not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager, by unseaworthiness of the ship, even existing at the time of shipment or sailing on the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy, nor for or by heating, explosions of cargo, rats, spray, frost or any effect of climate, heat of hold, damp, putrefaction, decomposition, rumidity, rust, presence of foreign matter upon and/or in containers and/or upon and/or mingled with goods, injury to or soiling of wrappers or packages, chafing, sweat, change of character, smell, evaporation, or damage from any other goods, drainage, leakage, breakage, rats, vermin, or damage or deterioration caused by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages, or injury from hooks; nor for result of tearing or breaking or bursting of containers or packages; nor for hand damages whether on wharf or elsewhere; nor for the obliteration, error, insufficiency, or absence of marks, numbers, addresses or descriptions; nor for risk of craft, hulk or transhipment, including any transfer on lighters; nor for any loss or damage caused by the prolongation of the voyage; nor for damages of any kind to articles perishable in their nature; that the carrier shall not be considered as to the correctness of statements herein of quantity, quality, weight, contents and value; and that the ship or ships on which such goods are carried are not warranted seaworthy as to any defect or deficiency not discoverable by due diligence of the owners.

It is also mutually agreed that the General Average shall be settled at San Francisco according to York-Antwerp Rules of 1890, and as to matter not therein provided for according to the law and usage of the Port of San Francisco.

This contract is subject to all the stipulations and agreements herein set forth on either side hereof, whether stamped or printed, whether or not usual or customary, and whether or not in one or several paragraphs. All said paragraphs are to be construed together.

AND FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of a special contract, whether or not signed by the shipper.

IN WITNESS WHEREOF, the Master or Agent of the said ship has affirmed to THREE Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in San Francisco, Cal., this 5th day of January, 1920

WILLIAMS, DIMOND & CO., Agents,

SHIPPERS. By MASTER OR AGENTS.

STATE TOTAL PAID CAL. WINE ASS'N

SHIPPERS ARE REQUESTED TO CAREFULLY READ THIS BILL OF LADING, WHICH CONSTITUTES THE CONTRACT BETWEEN THE SHIPPER OR AGENT OF THE OWNER OF THE PROPERTY CARRIED AND THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION. B-720

Kindly deliver 600 bbls. wine ex steamer "West Alota" to Young and Wile, Inc.

California Wine Association, [signature] Treasurer

ADDITIONAL STIPULATIONS AND AGREEMENTS OF THIS BILL OF LADING

IT IS ALSO MUTUALLY AGREED:

1. That the carrier shall not be liable for articles excepted in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof be given at the time of being entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goods as are lost or damaged or delayed (and for each fraction of one short ton lost or damaged or delayed an aliquot sum proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton), such short ton that is shipped being represented and agreed by the shipper as being of no greater value than One Hundred Dollars ($100.00) (under a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed thereafter stating such greater value.

3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper on the bill of lading given and agreed thereafter stating such greater value.

4. Also, that the shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be landed slack or torn, the consignees shall accept such proportion of the overplus as shall be allotted by the agents of the carrier, and the same shall be deemed a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, ice, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a letter being put into the post office addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and often held thereon for all extra expenses incurred in consequence; and the master or the carrier shall have the right under any and all circumstances, at his option, and without notice, to tranship the goods at carrier's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods; and if this in his judgment is inexpedient, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, as the authorities of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignees by day and by night as fast as the vessel can deliver, consignees paying all landing charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in no event be restricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignee to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the package, within ten days from the delivery thereof, or if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loss is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are carried in receptacles of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper as to such such receptacle to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignees shall accept such proportion of the oil or other fluid which has leaked from its receptacles (and from any other receptacles on said vessel containing oil or other fluids) and run into the bilges, or elsewhere, as may be allotted by the carrier or his agents, and such allotment shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of cooperage, of repairs to packages, of bailing or rebailing, or sacking or resacking of goods, incurred by the carrier, shall be repaid to the carrier by the shipper, and the carrier shall have a lien for such charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be settled according to the principles of the law of the United States, being the law of the flag of the vessel; nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Revised Statutes, 4281 to 4287, and the rules from time to time made thereunder and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc." Provided that in all cases where merchandise or property is transported under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States or America against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipowners shall be subject to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bill of Lading inconsistent with the said Act of Congress and Revised Statutes shall be treated as struck out and expunged, and all provisions herein shall be construed in connection with the provisions of such Act and be valid so far as consistent therewith.

16. Also, that as to all goods landed at Manila or at other Philippine ports, the cargo, in accordance with the regulations of the Philippine's customs service, is to be conveyed, by the ship's agents, at consignee's risk and expense, from the steamer to the Custom House wharf, and there delivered into the custody of the United States Custom House, for account of the consignee; and such delivery shall constitute a full discharge of the carrier's obligation, under this Bill of Lading, unless it be made to appear that exception was taken to the sufficiency of the delivery, by the customs authorities or employees when the goods were delivered into their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignees or their agents, in writing, to the ship's agents at Manila, within ten days after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, agents or master shall be liable therefor.

17. Also, that, if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

18. Also, that if the shipment hereunder is made at an Australian port, this Bill of Lading is to be read and construed as if every clause therein contained which is rendered illegal or null and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been omitted and eliminated therefrom prior to the execution thereof, and is hereof subject to all the terms and provisions of and to all the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or as hereinbefore set forth to transhipp.

20. Also, that the carrier shall not be responsible on shipments of lumber, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, flaws or discolorations.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims of any lien thereon are hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail when in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this Bill of Lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

NOTICE TO PRODUCE.

To California Wine Association, Libelant Above Named, and To J. M. Mannon, Farnham P. Griffiths and McCutchen, Olney, Mannon & Greene, Its Proctors:

You and each of you are hereby notified to produce before the trial of the above-entitled matter the following documents, to wit:

1. Original loading tags or receipts given to shipper for all cargo shipped on the SS. "West Aleta," voyage 51, sailing from San Francisco January 6, 1920.

2. All letters to and from the shipper relative to securing option for space for cargo to be shipped on the SS. "West Aleta" and relative to booking cargo thereon.

3. Original notices or circular letters sent to shipper by Messrs. Williams, Dimond Co. relative to schedule for ports of call, and date of departure.

4. Applications for insurance on cargo shipped on the SS. "West Aleta," Voyage 51. [604]

5. Originals of all policies issued to shipper for cargo on the "West Aleta," Voyage 51.

6. All open policies and certificates issued thereon for cargo shipped on the SS. "West Aleta," Voyage 51.

7. Invoices showing premiums paid and certifi-

cates issued on cargo shipped on the "West Aleta," Voyage 51; and,

8. Original entry books covering open policies, in which entries relative to certificates issued thereunder were made.

IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Due service and receipt of a copy of the within notice is hereby admitted this 24th day of December, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE,

[Endorsed]: Filed December 29, 1924. [6041/2]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Monday the 29th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 29, 1924, —HEARING.

This cause came on regularly this day to be heard.

J. M. Mannon and F. P. Griffiths, Esqrs., ap-

pearing as proctors for libelant and Ira S. Lillick, Chalmer G. Graham and J. Arthur Olson, Esqrs., appearing as proctors for respondent. Mr. Mannon introduced in evidence and read the agreed statement of facts, which was marked Libelant's Exhibit No. 1.

In accordance with the oral stipulation of the proctors for the respective parties hereto, IT IS ORDERED that the evidence introduced in the suit of Rosenberg Bros. & Co. vs. U. S. Shipping Board Emergency Fleet Corporation, No. 17,692, may be considered as the evidence in this suit in so far as it pertains to the issues joined herein.

ORDERED that the further hearing hereof be continued until 10 o'clock A. M. to-morrow. [605]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 30th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 30, 1924 —HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued until ten o'clock A. M. to-morrow. [606]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—DECEMBER 31, 1924 —HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing was resumed.

ORDERED that further hearing be continued to Friday, Jan. 2, 1925, at 10 A. M. [607]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Friday the 2d day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—JANUARY 2, 1925—HEARING (RESUMED).

The parties by their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued to Tuesday of Jan. 1925, at 10 A. M. [608]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Tuesday, the 6th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—JANUARY 6, 1925—HEARING (RESUMED).

The parties and their attorneys being present as heretofore, the hearing was resumed.

ORDERED further hearing continued to 10 o'clock A. M. to-morrow. [609]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 7th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—JANUARY 7, 1925—ORDER SUBMITTING SUIT ON BRIEFS IN CASE No. 17,692.

The parties and the attorneys being present as heretofore, the hearing was resumed.

ORDERED that this suit be submitted on briefs to be filed in case No. 17,692. [610]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Wednesday, the 23d day of September, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—SEPTEMBER 23, 1925—ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANT.

Pursuant to opinion filed, ordered that a decree be entered in favor of libelant. [611]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 17,693.

CALIFORNIA WINE ASSOCIATION (a Corporation),

Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),

Respondent.

FINAL DECREE.

The above-entitled cause came on regularly for hearing December 29, 30 and 31, 1924, and January 2, 6 and 7, 1925, before Honorable Frank H. Kerrigan, United States District Judge. Libelant appeared by J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Man-

non & Greene, its proctors, and respondent appeared by Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., its proctors.

Evidence oral and documentary was introduced, briefs were filed and the cause was submitted to the Court for decision. The Court being fully advised in the premises filed its decision and opinion herein, holding and deciding that libelant should recover from respondent the sum of Six Hundred Forty-two Thousand Eight Hundred Seventy-one (642,871) Dollars, together with interest at the rate of seven (7) per cent per annum on Four Hundred Fifty-six Thousand [612] Nine Hundred and Fifty-five (456,955) Dollars thereof from February twelfth, one thousand nine hundred and twenty, and interest at the same rate on the remainder thereof, to wit, One Hundred Eighty-five Thousand Nine Hundred and Sixteen (185,916) Dollars, from February fifteenth, one thousand nine hundred and twenty, which said interest to the date hereof amounts to the sum of Two Hundred Fifty-two Thousand and Five Hundred Twelve and 62/100 (252,512.62) Dollars, and costs.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant above named, California Wine Association (a corporation), do have and recover from respondent, United States Shipping Board Emergency Fleet Corporation (a corporation), the sum of Eight Hundred Ninety-five Thousand and Three Hundred Eighty-three and 62/100 (895,383.62) Dollars, together

with interest thereon at the rate of seven (7) per cent per annum from the date of this decree until paid, together with the costs to be hereafter taxed.

Dated this 24th day of September, 1925.

FRANK H. KERRIGAN,
United States District Judge.

Approved as to form, and five (5) days' lodging with the Court waived.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

[Endorsed]: Filed Sep. 24, 1925.

Entered in Vol. 19, Judg. and Decrees, at page 295. [613]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,963.

MOTION TO MODIFY FINAL DECREE.

Now comes the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent in the above-entitled matter, appearing by its proctors, Ira S. Lillick and Chalmers G. Graham, and makes this its motion to modify, in the manner hereinafter set forth, the final decree in the above matter entered and filed the 24th day of September, 1925.

Said respondent moves that said decree, now providing for interest at the rate of 7% per an-

num, be modified and changed to provide for interest at the rate of 4% per annum.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

To California Wine Association and to J. M. Mannon, Jr., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors.

You and each of you will please take notice that the above-entitled motion will be called for hearing on Saturday, the 24th day of October, 1925, or as soon thereafter as proctors for the respondent may be heard, in the courtroom of the above-entitled [614] court, Postoffice Building, Seventh and Mission Streets, in the city and county of San Francisco, State of California.

Dated this 23d day of October, 1925.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Receipt of a copy of the within motion and notice is hereby admitted this 23 day of Oct., 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Oct. 23, 1925. [615]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 17,693.

MINUTES OF COURT—OCTOBER 26, 1925—ORDER DENYING MOTION TO MODIFY FINAL DECREE.

The motion to modify the decree herein, heretofore heard and submitted, being now fully considered, IT IS ORDERED that said motion be and same is hereby denied. [616]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

NOTICE OF APPEAL.

To the California Wine Association, a Corporation, Libelant in the Above-entitled Cause, and to J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division:

You, and each of you, will please take notice, that the United States Shipping Board Emergency Fleet Corporation, respondent in the above-entitled cause, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, in Admiralty, entered in said cause on the 24th day of September, 1925, ordering, adjudging and decreeing that libelant, California Wine Association, a corporation, recover the amount sued for by reason of the matters alleged in the libel in said cause with interest and costs and finding the amount due to said libelant to be the sum of $895,383.62, with costs, and interest thereon from the date of said decree.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Dated: San Francisco, California, the 9th day of November, 1925. [617]

Due service and receipt of a copy of the within notice of appeal is hereby admitted this 13th day of November, 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Nov. 13, 1925. [618]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

ASSIGNMENTS OF ERROR.

Comes now the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent and appellant in the above-entitled cause (hereinafter termed "Fleet Corporation") and assigns error in the conclusions, findings, proceedings and decree of the District Court, as follows:

I.

That the District Court erred in ordering and entering a decree in favor of the California Wine Association, a corporation, libelant and appellee above named against the Fleet Corporation, respondent and appellant above named, for the recovery from said respondent and appellant of the principal sum of $642,871.00, together with interest thereon at the rate of 7% per annum from the 12th day of February, 1920, to the 24th day of September, 1925, in the further sum of $252,-512.62, together with interest and costs thereon.

II.

That the District Court erred in not dismissing [619] the libel of the California Wine Association against the Fleet Corporation.

III.

That the District Court erred in holding that the law has attached a fixed and certain meaning to the following liberty to call clause:

"Received in apparent good order and condition * * * at San Francisco * * * to be transported by the ship 'West Aleta' * * * *with leave* * * * *to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port of* Cardiff (Rotterdam) * * *."

IV.

That the District Court erred in holding that under such a clause the vessel did not have the liberty to proceed beyond the port of discharge named in the bill of lading and that the vessel under such a clause is limited in the application of the clause "to ports substantially on the course of the voyage described between its termini and before the port of destination."

V.

That the District Court erred in finding that the principal reason that the "West Aleta" took the course she followed on her voyage was convenience of the vessel in loading return cargo.

VI.

That the District Court erred in holding that the only distinction between the facts in the above-entitled cause and that of Smith vs. U. S. S. B. E. F. C. (2 Fed. (2d) 390) is that in the present case the greater part of the cargo was destined for Cardiff whereas in that case all of the cargo was shipped to Rotterdam. [620]

VII.

That the District Court erred in holding that the

phrase in the bill of lading before the court in this case "out of the customary route" was redundant and without meaning.

VIII.

That the District Court erred in holding that the phrase in the bill of lading before the Court in this case "out of the customary route" did not extend the liberties otherwise given in the said bill of lading.

IX.

That the District Court erred in holding that the liberties clause herein relied upon must be construed with reference to a particular voyage named in a particular bill of lading which covers only a part of the cargo between the ports of departure and the ports of destination named in the said bill lading.

X.

That the District Court erred in holding that the voyage described in the said bill of lading was a specific one and covered the shortest geographical distance between the ports of departure and the ports of destination named therein.

XI.

That the District Court erred in holding that the liberties clause herein relied upon had no application to any port or ports not naturally and usually ports of call on the voyage.

XII.

That the District Court erred in holding that in proceeding on the voyage on which the "West Aleta" was at the time of her loss the vessel was

initiating a new voyage before an old voyage was completed. [621]

XIII.

That the District Court erred in holding that the only question present was one of fact, namely: whether Hamburg is a port on the course of a voyage from San Francisco to Cardiff or Rotterdam.

XIV.

That the District Court erred in holding that the custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XV.

That the District Court erred in holding that evidence of the custom was inadmissible, and in excluding the same from consideration.

XVI.

That the District Court erred in holding that the liberties clause is plain and unambiguous, and in holding that the words "out of the customary route" are plain and unambiguous.

XVII.

That the District Court erred in holding that knowledge of the libelant that the "West Aleta" was to proceed to Hamburg before Rotterdam and Cardiff was unimportant.

XVIII.

That the District Court erred in holding that facts and circumstances extraneous to the bill of lading must be disregarded.

XIX.

That the District Court erred in holding that all evidence tending to indicate that the libelant knew or ought to have known of the course which was intended to be taken by the "West Aleta" must be excluded. [622]

XX.

That the District Court erred in holding that evidence tending to prove knowledge on the part of a shipper that a particular ship will deviate from a route is inadmissible and in excluding the same from consideration.

XXI.

That the District Court erred in holding that the "West Aleta" deviated in proceeding to Hamburg before she had discharged her Cardiff and Rotterdam cargo.

XXII.

That the District Court erred in holding that the "West Aleta" in so proceeding to Hamburg before discharging her Cardiff and Rotterdam cargo, under the circumstances of this case made the respondent and appellant an insurer of the said cargo.

XXIII.

That the District Court erred in holding that the Fleet Corporation was not entitled to the benefit of the insurance paid to the California Wine Association.

XXIV.

That the District Court erred in holding that the custom for vessels in the service in which the

"West Aleta" was engaged to call at ports of discharge in any order was not established.

XXV.

That the District Court erred in holding that a deviation avoids the contract of carriage.

XXVI.

That the District Court erred in holding that it was not a condition precedent to suit for loss against a carrier for deviation that the cargo owner had been deprived of its right against its insurer. [623]

XXVII.

That the District Court erred in not holding that the Fleet Corporation was only suable in admiralty under the provisions of the "Suits in Admiralty Act of 1920."

XXVIII.

That the District Court erred in not holding that the suit of the California Wine Association was barred under the provisions of Section 5 of the Suits in Admiralty Act of 1920.

XXIX.

That the District Court erred in not holding that the suit of the California Wine Association was barred by laches.

XXX.

That the District Court erred in holding that the "West Aleta" was a vessel operated by the Fleet Corporation.

XXXI.

That the District Court erred in awarding the libelant California Wine Association interest at the rate of 7% per annum.

XXXII.

That the District Court erred after holding that the libelant was entitled to interest, in not awarding the libelant interest at the rate of 4% per annum as provided in Section 3 of the Suits in Admiralty Act of 1920.

XXXIII.

That the District Court erred in not holding that the burden was on the libelant of proving what was the "customary route."

XXXIV.

That the District Court erred in not holding that the burden was on the libelant of proving that the "West Aleta" [624] departed from the "customary route," and in so doing exceeded the privileges given in the liberties clause when she proceeded toward Hamburg as her first port of call.

XXXV.

That the District Court erred in not holding that the libelant herein had failed to prove that the "West Aleta" departed from the customary route.

XXXVI.

That the District Court erred in not holding that under the terms and provisions of Section 3 of the Harter Act the Fleet Corporation was not an insurer.

XXXVII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered

by the libelant for the reason that said damage or loss resulted from faults or errors in navigation or in the management of said vessel.

XXXVIII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted and arose from dangers of the sea and/or other navigable waters and/or acts of God.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant. [625]

Due service and receipt of a copy of the within assignment of errors is hereby admitted this 23d day of December, 1925.

J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
EDWARD J. McCUTCHEN.

[Endorsed]: Filed Dec. 23, 1925. [626]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

STIPULATION EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1925, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between

the parties in the above-entitled cause that the time for filing of the same assignment of errors and apostles on appeal may be, and the same hereby is extended to and including the 15th day of December, 1925.

EDWARD J. McCUTCHEN,
J. M. MANNON, Jr., and
FARNHAM P. GRIFFITHS,
IRA S. LILLICK.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1925. [627]

[Title of Court and Cause.]

IN ADMIRALTY—No. 17,693.

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 4, 1926, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same hereby is, extended to and including the 4th day of January, 1926.

McCUTCHEN, OLNEY, MANNON & GREENE.

IRA S. LILLICK.

It is so ordered.

_____.

United States District Judge.

[Endorsed]: Filed Dec. 23, 1925. [628]

In the Southern Division of the United States District Court, Northern District of California, Third Division.

No. 18,046.

S. L. JONES & COMPANY, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

STATEMENT OF CLERK U. S. DISTRICT COURT.

PARTIES.

Libelant: S. L. Jones & Company, a Corporation.
Respondent: United States Shipping Board Emergency Fleet Corporation, a Corporation.

PROCTORS.

For Libelant: J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., & McCutchen, Olney, Mannon & Greene.

PROCEEDINGS.

1923.

Nov. 19. Filed libel, with interrogatories attached. Issuing citation, which was *return* executed.

Dec. 18. Filed exceptions to libel.

1924.

Feb. 4. Ordered exceptions to libel overruled.

[629]

Feb. 19. Filed answer to libel with interrogatories propounded to libelant. Also, answers to interrogatories propounded to respondent.

Jun. 17. Filed answers to interrogatories propounded to libelant.

Nov. 20. Filed agreed statement of facts.

Dec. 29. Hearing of issues (Hon. Frank H. Kerrigan, Judge). Hearing resumed on Dec. 30, 31, 1924, Jan. 2, 6, 1925, and submitted on January 7th, 1925.

1925.

Jan. 7. Filed deposition of W. M. Strong.

Jul. 27. Filed stipulation as to amount of recovery.

Sept. 23. Filed opinion. Ordered that a decree be entered in favor of libelant.

24. Filed final decree.

Oct. 23. Filed motion to modify final decree.

26. Ordered motion to modify final decree be denied.

Nov. 13. Filed notice of appeal.

Filed bond for costs on appeal.

Dec. 14. Ordered motion to stay execution submitted.

23. Filed assignment of errors.

Filed praecipe for apostles on appeal.

[630]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY—No. 18,046.

S. L. JONES & COMPANY, a Corporation,
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,
Respondent.

LIBEL IN PERSONAM.

To the Honorable M. T. DOOLING, Judge of the Southern Division of the United States District Court, for the Northern District of California:

The libel of S. L. Jones & Company, a corporation, against United States Shipping Board Emergency Fleet Corporation, a corporation, in a cause of contract and deviation, civil and maritime, respectfully shows:

I.

That libelant is and at all times herein mentioned was a corporation duly organized and existing

under and by virtue of the laws of the State of California.

II.

That respondent United States Shipping Board Emergency Fleet Corporation is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the District of Columbia, doing business in the State of California, and having its principal office and place of business [631] in said state at 369 Pine Street in the City and County of San Francisco.

That at all times herein mentioned the steamer "West Aleta" was an American steamer operated by the respondent United States Shipping Board Emergency Fleet Corporation solely as a merchant vessel; that at all times herein mentioned the steamer "Cockaponset" was an American steamer operated by said respondent solely as a merchant vessel.

III.

That libelant heretofore and, to wit, on or about the twentieth day of November, 1919, delivered in good order and condition at San Francisco, California, to respondent one hundred fourteen (114) cases of nutmegs for carriage by said steamer "Cockaponset" as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant; that respondent duly received said one hundred fourteen (114) cases of nutmegs and agreed to carry the same

by said steamer to Rotterdam, Holland, and there to deliver said nutmegs as aforesaid.

IV.

That respondent duly issued its bills of lading on account of said shipment of one hundred fourteen (114) cases of nutmegs on the twentieth day of November, 1919.

V.

That the full amount of freight charged and due for said shipment was the sum of five hundred and twenty (520) dollars, which sum libelant prepaid.

VI.

That respondent wrongfully neglected to ship eighty-two (82) of said one hundred fourteen (114) cases of nutmegs by [632] the said steamer "Cockaponset" and said vessel sailed from San Francisco without having on board said eighty-two (82) cases of nutmegs; that thereafter respondent placed said eighty-two (82) cases of nutmegs aboard the said steamer "West Aleta" for shipment to said port of Rotterdam, Holland.

VII.

That thereafter respondent duly issued its bill of lading on account of said shipment of eighty-two (82) cases of nutmegs by said steamer "West Aleta" on the sixth day of January, 1920.

VIII.

That the full amount of freight charged and due for said shipment of said eighty-two (82) cases of nutmegs by said steamer "West Aleta" was the sum of three hundred and seventy-nine and

25/100 (379.25) dollars, which sum libelant prepaid.

IX.

That on or about the sixth day of January, 1920, said steamer "West Aleta," having on board said eighty-two (82) cases of nutmegs, sailed from San Francisco, California; that instead of proceeding upon the agreed voyage from San Francisco to said port of Rotterdam, Holland, said vessel, with the knowledge and privity of respondent and pursuant to respondent's orders and instructions, deviated from said voyage and proceeded on an entirely different voyage to the port of Hamburg, Germany; that during the course of said deviation and after the said "West Aleta" had passed far beyond the said port of Rotterdam, Holland, without entering said port, she stranded on Terschelling Island (in the North Sea) and became a total loss.

X.

That by reason of said deviation, stranding and loss of [633] the said steamer "West Aleta," the said eighty-two (82) cases of nutmegs were totally lost, all to the damage of said libelant in the sum of four thousand, eight hundred and forty-one and 66/100 (4,841.66) dollars.

WHEREFORE, libelant prays that process in due form of law according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction and in accordance with acts of Congress in such cases made and provided, may issue to and against the said respond-

ent, the United States Shipping Board Emergency Fleet Corporation, citing and admonishing it to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to pronounce for and award to libelant its damages aforesaid, with interest and costs, and will enter a decree for said damages, interest and costs in favor of libelant and against respondent, and that libelant may have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [634]

State of California,
City and County of San Francisco,—ss.

P. C. Denroche, being first duly sworn, deposes and says:

That he is an officer, to wit, the President, of S. L. Jones & Company, a corporation, libelant in the above-entitled cause; that said S. L. Jones & Company is a corporation duly organized and existing under and by virtue of the laws of the State of California; that affiant makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing libel and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are docu-

ments, correspondence and papers coming to his attention as such officer of said corporation.

P. C. DENROCHE.

Subscribed and sworn to before me this 17th day of November, 1923.

[Notarial Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California. [635]

INTERROGATORIES ADDRESSED TO RESPONDENT TO BE ANSWERED BY IT UNDER OATH.

First Interrogatory.

Did respondent, or its agents, give the steamer "West Aleta," or its officers, any sailing orders prior to its departure from San Francisco, California, on or about the sixth day of January, 1920?

Second Interrogatory.

If the answer to the foregoing first interrogatory shall be in the affirmative, attach a true and correct copy of said sailing orders to the answer to these interrogatories.

Third Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said vessel, or its officers, any orders, instructions or directions in writing, other than said sailing orders, respecting the ports of call of said vessel upon the

voyage about to be commenced, or respecting the order of calling thereat?

Fourth Interrogatory.

If the answer to the foregoing third interrogatory shall be in the affirmative, attach true and correct copies of all said orders, instructions and directions to the answer to these interrogatories.

Fifth Interrogatory.

Did respondent or its agents at any time or times prior to the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, give said [636] vessel, or its officers, any orders, instructions, or directions, in any other way than in writing, respecting the ports of call of said vessel upon the voyage about to be commenced, or respecting the order of calling thereat?

Sixth Interrogatory.

If the answer to the foregoing fifth interrogatory shall be in the affirmative, state fully what all said orders, instructions and directions were.

Seventh Interrogatory.

After the departure of said steamer "West Aleta" from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage or the order of calling at said ports?

Eighth Interrogatory.

If the answer to the foregoing seventh interrogatory shall be in the affirmative, attach true and

correct copies of said orders, instructions and directions to the answer to these interrogatories.

Ninth Interrogatory.

After the departure of said vessel from San Francisco, California, on or about the sixth day of January, 1920, did respondent or its agents give any orders, instructions or directions in any other way than in writing to said vessel or its officers respecting ports at which said vessel should call on said voyage, or the order of calling at said ports?

Tenth Interrogatory.

If respondent's answer to the foregoing Ninth Interrogatory shall be in the affirmative, state fully what said orders, [637] instructions and directions were and how given.

Eleventh Interrogatory.

What was the first port of call of said steamer "West Aleta" on the voyage from San Francisco, California, leaving on or about the sixth day of January, 1920?

Twelfth Interrogatory.

To what first port of call was said Steamer "West Aleta" bound at the time of her stranding in or about the month of February, 1920?

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE.

[Endorsed]: Filed Nov. 19, 1923. [638]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

EXCEPTIONS TO LIBEL.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California.

The respondent, the United States Shipping Board Emergency Fleet Corporation, appearing by its proctor, Ira S. Lillick, excepts to the libel herein, as follows:

I.

That said libel fails to state facts sufficient to constitute a cause of libel against the respondent.

II.

That said libel fails to state facts sufficient to confer jurisdiction upon this court and that said court is without jurisdiction over the matters contained therein.

III.

That said libel fails to allege that the steamer "Cockaponset" was employed and/or operated as a merchant vessel at the time of the filing of the libel, or at the commencement of the alleged cause of libel therein contained. [639]

IV.

That it does not appear from the libel that at the time of the filing thereof the steamer "Cockaponset" was within the Northern District of California, or within the jurisdiction of this court.

V.

That it does not appear from the libel that at the time of the filing thereof the steamer "Cockaponset" was within the territorial limits of the United States or its possessions, or within the jurisdiction of this court.

VI.

That the libel fails to allege that the steamer "West Aleta" was employed and/or operated as a merchant vessel at the time of the filing of the libel, or at the commencement of the alleged cause of libel therein contained.

VII.

That it appears from the libel that at the time of filing thereof the steamer "West Aleta" was not within the Northern District of California, or within the jurisdiction of this court.

VIII.

That it appears from the libel that at the time of filing thereof the steamer "West Aleta" was not within the territorial limits of the United States, or of its possessions, or within the jurisdiction of this court.

IX.

That at the time of the filing of the libel herein, more than one year had elapsed since the coming into effect of that certain Act of Congress known as Suits in Admiralty Act, March 9, 1920, and particularly Section 5 thereof, and that by [640] and under the provisions of said Act, the alleged cause of libel set forth in said libel is barred.

X.

That the libel is insufficient in that:

a. It cannot be ascertained therefrom upon what route respondent agreed to carry and/or transport the merchandise specified therein to Rotterdam, Holland on the steamer "Cockaponset."

b. That it cannot be ascertained therefrom whether the 114 cases of nutmegs and/or the 82 cases of nutmegs mentioned therein were carried and/or transported under the bills of lading alleged to have been issued by the respondent on November 20, 1919, or under the bills of lading alleged to have been issued by the respondent on January 6, 1920.

c. That it cannot be ascertained therefrom, and particularly from Article IX thereof, what is meant by "the agreed voyage from San Francisco to said port of Rotterdam, Holland."

d. That it cannot be ascertained therefrom, and particularly from Article VI thereof, how or in what manner the respondent is alleged to have wrongfully neglected to ship 82 cases out of the 114 cases of nutmegs by the steamer "Cockaponset."

e. That it cannot be ascertained therefrom upon what route respondent agreed to carry and/or transport the 82 cases of nutmegs from San Francisco to Rotterdam, Holland, on the steamer "West Aleta."

f. That it cannot be ascertained therefrom whether or not the Port of Hamburg was a port of call at which the steamer "Cock-

aponset" was privileged to call on the voyage, provided for in the bill of lading.

g. That it cannot be ascertained therefrom whether or not the Port of Hamburg was a port of call at which the steamer "West Aleta" was privileged to call on the voyage provided for in the bill of lading. [641]

WHEREFORE, respondent prays that the libel herein be dismissed and that respondent have its costs of suit herein.

IRA S. LILLICK,
Proctor for Respondent.

Due service and receipt of a copy of the within exceptions to libel is hereby admitted this 17 day of Dec. 1923.

FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Dec. 18, 1923. [642]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the fourth day of February, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable JOHN S. PARTRIDGE, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—FEBRUARY 4, 1924—ORDER OVERRULING EXCEPTIONS TO LIBEL.

Ordered that respondent's exceptions to libel be overruled, with 15 days to answer. [643]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ANSWER.

To the Honorable, the Judges of the Southern Division of the United States District Court for the Northern District of California:

The answer of United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, in a cause of contract, civil and maritime, admits, denies and alleges as follows:

I.

Answering unto Articles I and II of the said alleged cause of libel, respondent admits the allegations contained therein.

II.

Answering unto Article III of the said alleged cause of libel, and particularly unto the allegation therein that on or about the 20th day of November,

1919, S. L. Jones & Company, a corporation, libelant herein, delivered in good order and condition at San Francisco, California, 114 cases of nutmegs for carriage by the steamer "Cockaponset," as alleged therein, respondent [644] is ignorant, so that it can neither deny nor admit the same, wherefore it calls for strict proof thereof, if relevant.

Said respondent denies that the said 114 cases of nutmegs, or any of them, were delivered in good order, and/or condition aboard the steamer "Cockaponset," but alleges that it was agreed under the terms of the bill of lading that the said 114 cases of nutmegs were shipped in apparent good order and condition on board the steamer "Cockaponset," and not otherwise.

Respondent denies that the said 114 cases of nutmegs were to be transported, and/or delivered, in like good order and/or condition, as alleged in said article, but in this behalf admits that said 114 cases of nutmegs were to be carried upon the said steamer and delivered at the port of Rotterdam, Holland, in accordance with the terms and conditions of certain bills of lading issued for said shipment, and that, among other things, said bills of lading provided that said shipment was to be delivered in like apparent good order and condition as when shipped, unto the consignee named in said bill of lading at the port of Rotterdam, Holland, and further said bill of lading provided that the said 114 cases of nutmegs were to be transported by the steamer "Cockaponset" "to be carried upon said vessel, or any other vessel operated by, or on

account of, the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board."

III.

Answering unto Article IV of the said alleged cause of libel, respondent admits the issuance of its bills of lading on account of the said shipments on the dates and for the quantities alleged in said article, but in this behalf respondent refers to the said original bills of lading, and demands that the libelant be required to produce said bills of lading upon the trial. [645]

IV.

Answering unto the allegations of Article V of said alleged cause of libel, respondent admits the same.

V.

Answering unto Article VI of the said alleged cause of libel, respondent denies that it neglected, and/or wrongfully neglected, to ship 82 of the said 114 cases of nutmegs by the steamer "Cockaponset," but in this behalf admits that 82 cases of nutmegs were shipped upon the steamer "West Aleta" in accordance with the terms and conditions of certain bills of lading issued for the said shipment, and that, among other things, said bills of lading provided that the said cases of nutmegs were to be transported by the steamer "Cockaponset" "to be carried upon the said steamer, or any other steamer operated by, or on account of, the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board."

Respondent admits that the said steamer "Cockaponset" sailed from the port of San Francisco without having on board 82 cases of the said 114 cases of nutmegs.

Respondent admits that thereafter it placed the 82 cases of nutmegs aboard the steamer "West Aleta" for shipment to the said port of Rotterdam, Holland, which said steamer "West Aleta" was then and there being operated by, or on account of, the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board.

VI.

Answering unto Article VII of the said alleged cause of libel, respondent admits the issuance of its bill of lading on account of the said shipment on the date and for the quantities alleged in said article, but in this behalf respondent refers to [646] the said original bills of lading, and demands that the libelant be required to produce said bills of lading upon the trial.

VII.

Answering unto the allegations of Article VIII of the said alleged cause of libel, respondent admits the same.

VIII.

Answering unto Article IX of the said alleged cause of libel, respondent admits that on or about the 6th day of January, 1920, the said steamer "West Aleta," having on board the said 82 cases of nutmegs, sailed from the Port of San Francisco, California, but denies that pursuant to

respondent's order and/or directions and/or otherwise, and/or at all, that the said steamer "West Aleta" deviated from the voyage alleged to have been agreed upon in said libel, and/or that it proceeded upon an entirely and/or different route to the port of Hamburg, Germany, but in this behalf respondent alleges that by and under the terms and conditions of the bills of lading it was agreed, among other things, that the carrier is to have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

Further answering said article, respondent admits that the steamer "West Aleta" stranded upon Terschelling Island (in the North Sea) and thereupon became a total loss.

IX.

Answering unto Article X of the said alleged cause of libel, respondent denies that the said 82 cases of nutmegs were totally lost by reason of the alleged, and/or any, deviation of the steamer "West Aleta," but in this behalf respondent refers to the allegations contained herein wherein reference is made to the bills of lading providing that the carrier should have liberty [647] "to touch at at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once."

As to the remaining allegations in said article, respondent alleges that it has no knowledge or information sufficient to enable it to answer the

same, so that it can neither admit nor deny said allegations, and calls for a strict proof thereof, if relevant.

X.

Further answering said libel, respondent alleges that at all of the times in the libel mentioned, prior to said stranding, due diligence has been exercised to make said steamer "West Aleta, in all respects seaworthy and properly manned, equipped and supplied, and said steamer was at all of said times in fact in all respects seaworthy and properly manned, equipped and supplied.

XI.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent alleges that, among other things, in and by the terms of said bills of lading, it was mutually agreed that the carrier should have liberty "to touch at any port, or ports, in any rotation or order in or out of the customary route, and to call at any port, or ports, more than once," and in this behalf respondent alleges that at the time of the said stranding of the said steamer "West Aleta" upon Terschelling Island, the said steamer was en route to the port of Hamburg, Germany, as a regular port of call under and by virtue of the terms of the bill of lading herein, and as a further and separate defense, said bill of lading further provides, in part, as follows:

"Clause 2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in [648] pack-

ages, the carrier shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100) for each short ton of such of said goods as are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed as aforesaid such proportion of One Hundred Dollars ($100) as the weight of such fraction bears to one short ton) each short ton that is shipped being represented and agreed by the shippers as being of no greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for, and the shipper shall not demand, any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being represented and agreed by the shipper as being in no event of a greater value than One Hundred ($100.00) unless a greater value is stated by the shipper and a bill of lading given and agreed therefor stating such greater value."

"Clause 8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting *from faults or errors in navigation,* or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit or to relieve the adventure from any common [649] peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness."

"Clause 10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this bill of lading, the total amount recoverable shall in any event be re-

stricted to the cash value of such goods at the port of departure at the time of shipment, the carrier reserving the option of replacing or repairing such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this bill of lading is valid unless made in writing by consignees to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the package before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or *if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery.* No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or *if said claim is for nondelivery, after nine months from the receipt thereof, by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.*"

"Clause 11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any *insurance* that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder

the amount of any loan made by any insurer on the goods carried hereunder, to the shipper or owner of the cargo, which loan is made pending any claim for insurance on such goods."

"Clause 14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use diligence properly to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely [650] due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise."

XII.

Further answering unto said libel, and as a separate defense thereto, respondent alleges that any damage to, or loss of, cargo was caused by one or more, and/or a combination of two or more of the risks, and/or perils, excepted in said bill of lading, and/or by the provisions of the Act of Congress of the United States, approved February 13, 1893, commonly known as the Harter Act.

XIII.

Further answering said cause of libel, respondent alleges that no value greater than $100.00 for each short ton, or a fraction thereof, was stated by the shipper, nor was there any agreement stating any greater value.

XIV.

Further answering said cause of libel, and as a separate defense thereto, respondent alleges that no claim was presented in writing within the time limited in Clause 10 of the bill of lading, nor was any suit commenced under the bill of lading, or in respect of said shipment of goods, within the time limited in Clause 10 of the bill of lading, under which said goods were shipped and that, by reason thereof, any claims under said bill of lading, or in respect of said goods, were waived, and became barred, and the carrier was discharged therefrom.

XV.

Further answering said alleged cause of libel, respondent alleges that said 82 cases of nutmegs were insured, and respondent claims the benefit thereof, and claims a deduction from any claim herein to the amount of any payment or loan made in respect of said shipment of nutmegs. [651]

XVI.

Further answering unto said alleged cause of libel, respondent hereby refers to the bills of lading under which said goods were shipped, and prays that the libelant be compelled to produce the same at trial, and refers to each and all of the terms and conditions of said bills of lading, as though said bills of lading were attached hereto, and made a part hereof.

XVII.

Further answering said alleged cause of libel, and as a separate defense thereto, respondent al-

leges that it did not agree to carry said 82 cases of nutmegs on any particular route, and/or to any port of call in any particular order and, in this behalf alleges that by the terms of the bill of lading covering said shipment herein, it is expressly agreed that the carrier is to have "leave to touch at any port, or ports, in any rotation or order in or out of the customary route."

WHEREFORE, respondent prays that said libel may be dismissed and for its costs herein.

IRA S. LILLICK,
Proctor for Respondent. [652]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director, of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such, is authorized to make this verification; that he has read the foregoing answer to the libel herein and knows the contents thereof and that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California. [653]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ANSWERS TO INTERROGATORIES PROPOUNDED BY LIBELANT TO RESPONDENT.

Answer to Interrogatory No. 1: Yes.
Answer to Interrogatory No. 2: Attached.
Answer to Interrogatory No. 3: No.
Answer to Interrogatory No. 4: None given.
Answer to Interrogatory No. 5: No.
Answer to Interrogatory No. 6: None.
Answer to Interrogatory No. 7: No.
Answer to Interrogatory No. 8: None.
Answer to Interrogatory No. 9: No.
Answer to Interrogatory No. 10: None.
Answer to Interrogatory No. 11: Balboa, Canal Zone.
Answer to Interrogatory No. 12: Hamburg, Germany.

IRA S. LILLICK,
Proctor for Respondent. [654]

In the Northern District of the State of California, City and County of San Francisco,—ss.

F. H. Relyea, being first duly sworn, deposes and says:

That he is an officer, to wit, the District Director of the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent herein, and as such is authorized to make this verification; that he has read the foregoing answers to

interrogatories propounded by libelant to respondent herein and knows the contents thereof and that the same are true of his own knowledge, except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

F. H. RELYEA.

Subscribed and sworn to before me this 18th day of February, 1924.

[Seal] M. V. COLLINS,

Notary Public in and for the City and County of San Francisca, State of California. [655]

INTERROGATORIES DIRECTED TO LIBELANT, TO BE ANSWERED BY IT UNDER OATH.

Interrogatory No. 1: Was any insurance carried upon the said 82 cases of nutmegs, or any part thereof, herein?

Interrogatory No. 2: If so, attach copy of insurance policy.

Interrogatory No. 3: Has any insurance been paid on account of the loss, and/or damage, to the said 82 cases of nutmegs, herein?

Interrogatory No. 4: If so, how much and to whom have said payments been made?

Interrogatory No. 5: Has any loan been made on account of the loss, and/or damage, to the said 82 cases of nutmegs, herein?

Interrogatory No. 6: If so, how much and to whom have the said loans been made?

IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Feb. 19, 1924. [656]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ANSWERS TO INTERROGATORIES PROPOUNDED BY RESPONDENT TO LIBELANT.

Answer to Interrogatory No. 1: Yes, insurance was carried upon 82 cases of nutmegs.

Answer to Interrogatory No. 2: Said insurance was covered by Certificates Nos. 11152, 11153, 11154, 11416, dated, respectively, November 26, 1919, November 26, 1919, and January 8, 1920, all issued by The Switzerland Marine Insurance Company, Ltd. Said certificates were in the usual form employed by said Insurance Company, and covered the usual risk. Libelant offers to permit respondent to inspect the said original certificates at any time upon request.

Answer to Interrogatory No. 3: Yes.

Answer to Interrogatory No. 4: $4,841.66, paid to Messrs. R. Mees & Zoonen.

Answer to Interrogatory No. 5: No.

Answer to Interrogatory No. 6: None.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant. [657]

State of California,
City and County of San Francisco,—ss.

P. C. Denroche, being first duly sworn, deposes and says:

That he is an officer, to wit, the president of S. L. Jones & Company, a corporation, libelant in the above-entitled cause, and makes this verification for and on behalf of the libelant for the reason that it is a corporation as aforesaid; that he has read the foregoing answers to interrogatories propounded by respondent to libelant herein and knows the contents thereof, and that the same are true of his own knowledge except as to those matters which are therein stated on information and belief, and that as to those matters he believes it to be true.

P. C. DENROCHE.

Subscribed and sworn to before me this 9th day of June, 1924.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San Francisco, State of California.

Service of the within answer to Interrogatories

and receipt of a copy is hereby admitted this 16 day of June, 1924.

I. S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Jun. 17, 1924. [658]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

AGREED STATEMENT OF FACTS.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that the following facts are true and that said facts shall be deemed proved at any trial or trials of said cause without the necessity of any evidence other than this stipulation, to wit:

(1) That libelant heretofore, and, to wit, on or about the twentieth day of November, 1919, delivered in good order and condition at San Francisco, California, to respondent one hundred fourteen (114) cases of nutmegs for carriage by the steamer "Cockaponset" as a common carrier of merchandise by sea, upon a voyage to Rotterdam, Holland, and delivery there in like good order and condition unto the order of said libelant; that respondent duly received said one hundred fourteen (114) cases of nutmegs and agreed to carry the same by said steamer to Rotterdam, Holland, and there to deliver said nutmegs as aforesaid.

(2) That respondent failed to carry eighty-two (82) of said one hundred and fourteen (114) cases

of nutmegs by said steamer "Cockaponset" and said vessel sailed from San Francisco without [659] having on board said eighty-two (82) cases of nutmegs; that thereafter respondent placed said eighty-two (82) cases of nutmegs aboard the steamer "West Aleta" for shipment to said port of Rotterdam, Holland.

(3) That on the 20th day of November, 1919, respondent issued its bill of lading on account of the shipment of said one hundred fourteen (114) cases of nutmegs by the said steamer "Cockaponset." That thereafter and after eighty-two (82) cases of said one hundred fourteen (114) cases of nutmegs had been placed aboard said steamer "West Aleta" to wit, on the 6th day of January, 1920, respondent issued its bill of lading on account of said shipment of eighty-two (82) cases of nutmegs by said steamer "West Aleta." A true and correct copy of said bill of lading is attached hereto and marked Exhibit "C." The bill of lading issued on November 20, 1919, as aforesaid, was in the form of said Exhibit "C" except as to date, quantity, description of goods, freight charges and name of vessel. This shall be deemed sufficient showing of both of said bills of lading as requested by said respondent.

(4) That the steamship "West Aleta" loaded and carried approximately two thousand six hundred thirty-four (2634) tons of cargo destined for Cardiff, Wales, one thousand five hundred and three (1503) tons of cargo destined for Rotterdam, Holland, and six hundred and sixty-one (661) tons

of general merchandise destined for Hamburg, Germany. Said Cardiff and Rotterdam cargo was chiefly barrels of wine, brandy and oil, and said cargo was in the main stowed in the lower holds and the Hamburg cargo was principally stowed on top of said Cardiff and Rotterdam cargo. Said stowage was prudent.

(5) That at all of the material times herein due diligence was exercised to make the steamship "West Aleta" in all respects seaworthy and properly manned, equipped and supplied.

(6) That from December 4, 1919, to January 6, 1920, [660] inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "D," and hereby made a part hereof, appeared daily in the "Daily Commercial News of San Francisco," and on and between the same dates, inclusive, an advertisement, a copy of which is hereto annexed, marked Exhibit "E" and hereby made a part hereof, appeared daily in "The Guide," a leading commercial paper of San Francisco.

(7) That no greater value than that mentioned in Clause 2 and/or Clause 3 of the said bill of lading was stated by the shippers, nor was any bill of lading given and agreed therefor stating a greater value.

(8) That the steamship "West Aleta" sailed from San Francisco, California, on January 6, 1920, having on board all the cases of nutmegs described in paragraph (2) hereof. That in accordance with orders issued to the master, the vessel proceeded by the direct route from the Pacific Coast to the port

of Hamburg via the Panama Canal. The course of the vessel and the circumstances of stranding are shown in a copy of the master's extended protest hereto attached, marked Exhibit "F" and hereby made a part hereof. That on the 12th day of February, 1920, at approximately two-twenty-eight o'clock A. M., the said vessel stranded and was wrecked on Terschelling Island in the North Sea, and, with all her cargo, she became a total loss. All the cases of nutmegs described in paragraph (2) hereof were totally destroyed as a result of the stranding and wreck of said steamship as aforesaid.

(9) That the only ground upon which libelant asserts claim against respondent is upon the ground of improper deviation.

(10) If, instead of proceeding toward Hamburg as her first port of call, the steamer "West Aleta" had put into Rotterdam as [661] her first port of call, she would have arrived at Rotterdam on or about the 11th day of February, 1920. If, instead of proceeding toward Hamburg as her first port of call, the steamer "West Aleta" had put into Cardiff, Wales, as her first port of call and there discharged cargo and then proceeded to the port of Rotterdam as her second port of call, she would have arrived at Rotterdam on or about the 15th day of February, 1920. The market value of the goods described in paragraph (2) hereof at Rotterdam, Holland, on or about the 11th day of February, 1920, and on or about the 15th day of February, 1920, was the sum of Four Thousand

Eight Hundred Forty-one Dollars and Sixty-six Cents ($4,841.66).

(11) That no claims in writing with respect to the matters involved herein were made, nor was this libel filed within nine (9) months after respondent received the goods described in paragraph (2) hereof.

(12) That in stipulating the facts herein the respective parties do not concede the relevancy or materiality of any fact so stipulated.

(13) That either party may offer evidence upon matters deemed pertinent and not covered by this stipulation.

Dated: San Francisco, California, November 19, 1924.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent. [662]

19 DEC 1924

THE UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

Bill of Lading—Pacific Form

Received in apparent good order and condition, from S. L. JONES & COMPANY

at SAN FRANCISCO marked and numbered as below (unless otherwise noted hereon), contents and condition of contents unknown, weights, measurements, and value unknown, to be transported by the ship "WEST ALTA" now at or to arrive at the port of Oakland, to the wharf or place of discharge as may be designated by the master, or as near thereto as she may safely get, always afloat, upon said vessel or any other vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board, with leave to call with or without pilots, to tranship to any other vessels operated by said corporation, or said Board, or for its account, to lighter from vessel to vessel and from vessel to shore, to shift ports in any order, and to proceed to and stay at any port or ports, in any rotation or order, for, or out of, the customary route and to call at any port or ports more than once, unto the port of ROTTERDAM (or as near thereto as she may safely get), and there deliver in the apparent good order and condition, of the vessel's holds, unto ORDER S. L. JONES & CO. ROTTERDAM, HOLLAND or assigns, freight being paid as hereinafter provided, they paying average accustomed (if any incurred).

MARKING: SE. MAN & CO. AMSTERDAM

Marks and Nos.	Packages	Contents	Gross Weight
K. P. K. B. F.	38	CO. NOTHING	79365
K. P. K. B. F.	38	DO.	70365
K. V. C. I.K.R.	6	DO.	2110 #
	82		

EXHIBIT C.

DAMAGED CARGO EX SS "COCKAPONSET"; NOT RESPONSIBLE FOR LOSS OF CONTENTS OR CONDITION THEREOF

The vessel shall have liberty to deviate for the purpose of making trial trips and the ship

Freight Charges

151705 @ $3.80 per 1000 $574.85

WILLIAMS, DIMOND & CO.

Rates, weight and/or measurement subject to correction.

Prepaid freight to be considered as earned and not to be repaid to shipper, even if there be a forced interruption or abandonment of the voyage at the port of loading, a port of shelter, the port of delivery or any other port into which the ship may put or be taken, and/or even if the vessel or goods be lost, damaged or destroyed at any time of the said transit, and/or after goods be unloaded from the vessel, without negligence or with negligence in navigation or management of the vessel and that to contribute to general average whether the happening of any of the contingencies herein mentioned the said vessel is to have the right to forward the above-mentioned cargo to the port of destination, [illegible] payment for such service, whether performed by the vessels operated by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, or those of stevedores; and in case of salvage services rendered to aforesaid merchandise or freight during the voyage by a vessel operated [illegible] on account of the United States Shipping Board Emergency Fleet Corporation, or by the United States Shipping Board, such salvage services shall be paid for as fully as if such [illegible] vessels belonged to private owners.

It is mutually agreed that the ship shall have liberty to carry goods of all kinds, dangerous or otherwise, to tow and assist vessels in all situations, to deviate for the purpose of saving life or property; it is also agreed, should the ship put into a port of refuge, or be prevented from any cause from commencing with or proceeding in the customary course of her voyage, or should the goods or any part of them be shut out from said vessel, that the carrier is authorized but not compelled to forward or transship the goods to their destination, by any other vessel, steam, motor or sail, at shipper's risk.

It is the mutually agreed that the carrier shall not be liable for loss or damage occasioned by causes beyond its control, or by the perils of the sea or other waters, by fire, from any cause whatsoever occurring, by barratry of the master or crew by enemies, pirates or robbers, by pillage, by arrest and restraint of princes, rulers or people, riots, strikes or stoppage of labor, by explosion, or bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collision, stranding, or other accidents of navigation of whatsoever kind, even when occasioned by the negligence, default or error in judgment of the pilot, master, mariners, or other servants of the [illegible] operation of the ship not resulting, however, in any case, from want of due diligence by the owner or operator of the ship or any of them, or by the ship's husband or manager, by whatever name called, to make the ship, even existing at the time of shipment or sailing on the voyage, provided the owner or operator has exercised due diligence to make the vessel seaworthy, nor for or by reason of explosion of cargo, rain, spray, heat or any effects of climate, heat of hold, decay, putrefaction, decomposition, rancidity, rust, presence of foreign matter upon and/or in containers and/or [illegible] with goods, injury by contact of wrappers or packages, chafing, sweat, change of character, smell, evaporation, or damage from any other goods, breakage, leakage, [illegible] or damage occasioned by fumigation or disinfection, or any loss or damage arising from the nature of the goods or the insufficiency of packages, or injury from hooks; nor for [illegible] hooking or breaking of hooping of containers or packages; nor for land damages whether on wharf or elsewhere; nor for the obliteration, error, insufficiency, or absence of marks, [illegible] addresses or descriptions; nor for risk of craft, bulk or transshipment, including any transfer on lighters; nor for any loss or damage caused by the prolongation of the voyage; nor for damages or [illegible] to articles perishable in their nature; that the carrier shall not be considered as to the correctness of statements herein of quantity, quality, weight, contents and value and [illegible] ship on which such goods are carried are not warranted seaworthy as to any defect or deficiency not discoverable by due diligence of the owners.

It is also mutually agreed that the General Average shall be settled at San Francisco according to York-Antwerp Rules of 1890, and as to matter not therein provided for according to the law and usage of the Port of San Francisco.

This contract is subject to all the stipulations and agreements herein set forth on either side hereof, whether stamped or printed, whether or not signed or customary, and whether or not in one or several paragraphs. All said paragraphs are to be construed together.

AND FINALLY, in accepting this Bill of Lading, the shipper, owner and consignee of the goods and the holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such shipper, owner, consignee, or holder, and it is hereby mutually stipulated and agreed that this Bill of Lading shall have the effect of a special contract, whether or not signed by the shipper.

IN WITNESS WHEREOF, the Master or Agent of the said ship has affirmed to TWO Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in SAN FRANCISCO, this 6TH day of JANUARY 1925.

Accepted as to all the terms and conditions hereof.

24

IT IS ALSO MUTUALLY AGREED:

1. That the carrier shall not be liable for articles excepted in Section 4281 of the Revised Statutes of the United States unless written notice of the true character and value thereof is given at the time of lading and entered in the bill of lading.

2. Also, that for loss or damage to or delay in delivery of goods of any description, whether carried in bulk or in packages, the carrier shall not be liable for, and the shipper shall not claim any greater sum than One Hundred Dollars ($100.00) for each short ton of such of said goodsas are lost or damaged or delayed (and/or for each fraction of one short ton lost or damaged or delayed or allowed such proportion of One Hundred Dollars ($100.00) as the weight of such fraction bears to one short ton), each short ton that is shipped being ascertained and agreed by the shipper to be of the greater value than One Hundred Dollars ($100.00) (and/or a proportionate amount of One Hundred Dollars ($100.00) for each additional fraction of one short ton, or for each shipment of less than one short ton), unless a greater value is stated by the shipper and a bill of lading given and agreed thereto stating such greater value.

3. Also, that if for any reason whatsoever the carrier shall be liable in a different or greater amount than set forth in paragraph two, then the carrier in respect of goods of any description shall not be liable for and the shipper shall not demand any greater sum than One Hundred Dollars ($100.00) for loss or damage to or delay in delivery of any one package, each package being ascertained and agreed by the shipper as being to an extent of a greater value than One Hundred Dollars ($100.00) unless a greater value is stated by the shipper and a bill of lading given and signed thereto stating such greater value.

4. Also, that the shipper shall be liable for any loss or damage to ship or cargo caused by dangerous, explosive or dangerous goods, shipped without full disclosure of their nature whether such shipper be principal or agent; and that such goods may be thrown overboard or destroyed at any time without compensation.

5. Also, that if any bags of grain, coffee, cocoa, or similar cargo be loaded slack or torn, the consignees shall accept such proportion of the overplus as shall be allotted by the agents of the carrier, and the same shall be declared a full settlement of any claim for loss in weight.

6. Also, that if, on account of weather, rust, earthquake, epidemic, quarantine, riot, war or other disturbance, blockade or interdict of the port of destination, command of government or governments, or any cause beyond the control of the carrier, it should be considered impracticable or unsafe, in the opinion of the master, to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip, or transfer same to another vessel, steam, motor or sail, at risk and expense of shipper, owner, or consignee of the goods; such landing or transfer shall be deemed a final delivery under this contract, and upon a letter being put into the post office addressed to the shipper, or consignee, if named in the Bill of Lading, stating the landing and where deposited, or to what ship the transfer is made, the carrier shall be relieved from all responsibility; and such goods shall be liable and a lien held thereon for all extra expenses incurred in consequence; and the master or the carrier shall have the right under any and all circumstances, at his option, and without notice, to tranship the goods at further's expense, but at shipper's risk, at the port of shipment, or at any intermediate port, by any other vessel, steam, motor or sail.

7. Also, that the master of the vessel has the right of hiring lighters at the port of destination for the landing of the within goods, at the expense and risk of owner of said goods; and if this in his judgment is impracticable, the goods to be taken from the ship's tackles, where the ship's responsibility shall cease, and to be taken from alongside by the consignee immediately the vessel is ready to discharge, or otherwise they will be landed by the master at the expense of the consignee, and at his risk of fire, loss or injury, as the custom of the port of discharge shall direct.

8. Also, that if the owner or operator shall have exercised due diligence to make the vessel in all respects seaworthy and to have her properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster, resulting from faults or errors in navigation, or in the management of the vessel, or from any latent defect in the vessel, her machinery or appurtenances, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent defect or the unseaworthiness was not discoverable by the exercise of due diligence), the shipper, consignees or owners of the cargo shall, nevertheless, pay salvage, and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in General Average to the payment of any sacrifices, losses or expenses of a General Average nature that may be made or incurred for the common benefit, or to relieve the adventure from any common peril, all with the same force and effect, and to the same extent as if such danger, damage or disaster had not resulted from or been occasioned by faults or errors in navigation, or in the management of the vessel, or any latent defect or unseaworthiness.

9. Also, that the goods are to be received by the consignee by day and by night as fast as the vessel can deliver, consignee paying all landing charges and any extra charges incurred after the discharge, and necessary for the vessel's quick dispatch.

10. Also, that in case the carrier is liable for loss or damage to any goods or merchandise under this Bill of Lading, the total amount recoverable shall in any event be computed on the cash value of such goods at the port of destination at the time of shipment, the carrier receiving the benefit of expediting or regaining such goods at his expense, and that all claims for partial loss or damage shall be ascertained and adjusted upon the same basis of value. No claim arising under this Bill of Lading is valid unless made in writing by consignee to carrier's agent at the port of discharge, if for matters discoverable in all or in part without opening the packages before removing the goods from the dock, or if for matters discoverable only by opening the packages, within ten days from the delivery thereof, or if for nondelivery of the goods, within twenty days after the discharge of the vessel, or her departure from port of delivery. No suit shall be commenced on any claim under this Bill of Lading after six months from the delivery of the goods to the consignee, or if said claim is for nondelivery, after nine months from the receipt thereof by the carrier; in default of which making of such claim or filing of suit, such claim for loss or damage shall be deemed to be waived and the carrier discharged therefrom.

11. Also, that any carrier or party liable on account of loss or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, and the carrier may deduct from any claim hereunder the amount of any loss made by any insurer on the goods against hereunder, to the shipper or owner of the cargo, which loss is made pending any claim for insurance on such goods.

12. Also, that when oil or other fluids are carried in consignation of any kind, the carrier shall only be liable for leakage, all of which is shown affirmatively by the shipper to be such such respects to be solely due to negligence, fault or failure in proper loading, stowage, custody, care or proper delivery, and in the event of any leakage the consignee shall accept such proportion of the oil or other fluid which has leaked from the consignment (and from any other consignment on said vessel containing oil or other fluids) and may have the leakage, if any, ascertained by the carrier or his agents; and such statement shall be deemed a full settlement for any loss in weight.

13. Also, that all expenses of scavenging, of bilging by passengers, of bailing or unbailing, or making or unmaking of goods, required by the master, shall be repaid to the master by the shipper, and the carrier shall have a lien for these charges upon all goods of the shipper concerning whose goods such expenses were incurred.

14. Also, that the carrier shall be liable only for loss of or damage to goods, all of which loss or damage is affirmatively shown and proved by the shipper to be solely due to the carrier's failure to use due diligent property to equip, man, provision and outfit said vessel and to make said vessel seaworthy and capable of performing her intended voyage or solely due to the carrier's negligence, fault or failure in proper loading, stowage, custody, care or proper delivery of said goods or merchandise.

15. Also, that all questions arising under this Bill of Lading shall be decided according to the principles of the law of the United States, being the law of the flag of the vessel, nothing herein contained shall prevent the shipowner or operator from claiming the benefits of the United States Limited Liability Act, and the rules laid down in the said Limited Liability Act and of the provisions of the Act of Congress of the United States approved on the 13th day of February, 1893, entitled "An Act Relating to Navigation of Vessels, etc.", Revised Statutes of the United States, Section 4283, and all acts amendatory thereof, shall govern with respect to all matters not herein specifically provided for. And it is also agreed that in all cases where jurisdiction or property is sought to be obtained under this contract from or between ports of the United States and foreign ports within the meaning of the said Act of Congress of 1893, and proceedings are taken in the United States of America, against the carrier or vessel carrying the goods, then the provisions of the said Act of Congress and Revised Statutes shall be held to apply to this contract, and the shipowner shall be entitled to all the terms and provisions of, and all exemptions from liability contained in the said Act of Congress and Revised Statutes; and any provisions in the Bills of Lading inconsistent with the said Act of Congress and Revised Statutes shall be annulled as absolute and void and inoperative, and all provisions herein shall be construed in accordance with the provisions of such Act and be valid as far as permitted thereby.

16. Also, that if the Bill of Lading covers goods to ports in the Philippine Islands, the cargo, in accordance with the requirement of the Philippine Commission, is to be transported by the ship's agents, or representatives, from ship's tackle to the Customs House wharf, and there delivered into the custody of the United States Customs House, the amount of the consignment and such delivery shall constitute a full discharge of the carrier's obligations, under this Bill of Lading, unless it be made to appear that exception was taken to the conformity of the delivery, by the consignee personally or authorized agent, in connection with the goods upon discharge from their custody. In the event of such exception being taken, notice of any claim intended to be made for shortage, loss or misdelivery of, or any damage to cargo, shall be presented by the consignee or their agents, in writing, to the ship's agents at Manila, within one day after the completion of the discharge of the vessel, and in default of such notice the claim shall be deemed to have been waived, and neither the vessel, her owners, charters or agents shall be liable therefor.

17. Also, that, if made at a Canadian port, this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in the Water Carriage of Goods Act, 1910.

18. Also, that, if the shipment hereunder is made at an Australian port, this Bill of Lading is to be read and construed as if every clause therein contained which is repugnant thereto or void and void by the Sea Carriage of Goods Act, 1904, had never been inserted therein or had been amended and abandoned thereby prior to the execution thereof, and is hereby subject to all the benefits and provisions of and to the exemptions from liability contained in such Act.

19. Also, in case the shipment hereunder is made from any port on the Pacific Ocean to any port on the Atlantic Ocean, the carrier shall have the right to carry the same via Panama Canal or Straits of Magellan or Cape Horn, or via Suez Canal or not, as he may elect.

20. Also, that the carrier shall not be responsible on shipments of bamboo, logs, staves, etc., for number of pieces in bundles or broken bundles, nor for splits, cracks, shakes or checks.

21. Also, that in view of the operation of this vessel by or on account of the United States Shipping Board Emergency Fleet Corporation, or the United States Shipping Board, no lien shall attach to said vessel for any alleged breach of this contract and that any and all claims to any lien thereon are hereby expressly waived.

22. Also, that if the shipper hereunder is the charterer of the vessel named herein, then all provisions of the charter of the vessel shall prevail when in conflict with this Bill of Lading.

23. Also, that all clauses, terms and conditions binding upon the shipper under this Bill of Lading shall also be binding upon the owners and consignees of goods, although not specifically referred to.

[Endorsed]: Filed Nov. 20, 1924. [665]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

NOTICE TO PRODUCE.

To S. L. Jones & Company, a Corporation, Libelant Above Named, and to J. M. Mannon, Farnham P. Griffiths, and McCutchen, Olney, Mannon & Greene; its Proctors:

You and each of you are hereby notified to produce before the trial of the above-entitled matter the following documents, to wit:

1. Original loading tags or receipts given to shipper for all cargo shipped on the S. S. "West Aleta," voyage 51, sailing from San Francisco January 6, 1920.

2. All letters to and from the shipper relative to securing option for space for cargo to be shipped on the S. S. "West Aleta" and relative to booking cargo thereon.

3. Original notices or circular letters sent to shipper by Messrs. Williams, Dimond Co., relative to schedule for ports of call, and date of departure. [666]

4. Applications for insurance on cargo shipped on the S. S. "West Aleta," Voyage 51.

5. Originals of all policies issued to shipper for cargo on the "West Aleta," Voyage 51.

6. All open policies and certificates issued thereon for cargo shipped on the S. S. "West Aleta," Voyage 51.

7. Invoices showing premiums paid and certificates issued on cargo shipped on the "West Aleta," Voyage 51; and,

8. Original entry books covering open policies, in which entries relative to certificates issued thereunder were made.

IRA S. LILLICK,
Proctor for Respondent.

Due service and receipt of a copy of the within notice is hereby admitted this 24th day of December, 1924.

McCUTCHEN, OLNEY, MANNON & GREENE.

[Endorsed]: Filed December 29, 1924. [667]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 29th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—DECEMBER 29, 1924—HEARING.

This case came on regularly this day to be heard. J. M. Mannon and F. P. Griffiths, Esqrs., appearing as proctors for Libelant and Ira S. Lillick, Chalmer G. Graham and J. Arthur Olson, Esqrs.,

appearing as proctors for respondent. Mr. Mannon introduced in evidence and read the agreed statement of facts, which was marked Libelant's Exhibit No. 1.

In accordance with the oral stipulation of the Proctors for the respective parties hereto, it is ordered that the evidence introduced in the suit of Rosenberg Bros. & Co. vs. U. S. Shipping Board Emergency Fleet Corporation, No. 17,692, may be considered as the evidence in this suit in so far as it pertains to the issues joined herein.

ORDERED that the further hearing hereof be continued until 10 o'oclock A. M. tomorrow. [668]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof in the City and County of San Francisco, on Tuesday, the 30th day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT — DECEMBER 30, 1924—HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued until ten o'clock A. M. to-morrow. [669]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 31st day of December, in the year of our Lord one thousand nine hundred and twenty-four. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT — DECEMBER 31, 1924—HEARING (RESUMED).

The parties with their attorneys being present as heretofore, the hearing was resumed.

ORDERED that further hearing be continued to Friday, Jan. 2, 1925 at 10 A. M. [670]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 2d day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—JANUARY 2, 1925—HEARING (RESUMED).

The parties by their attorneys being present as heretofore, the hearing hereof was resumed.

ORDERED further hearing continued to Tuesday, Jan. 6, 1925, at 10 A. M. [671]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 6th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—JANUARY 6, 1925—HEARING (RESUMED).

The parties and their attorneys being present as heretofore, the hearing was resumed.

ORDERED further hearing continued to 10 o'clock A. M. to-morrow. [672]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 7th day of January, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—JANUARY 7, 1925—ORDER SUBMITTING SUIT ON BRIEFS IN CASE No. 17,692.

The parties and the attorneys being present as heretofore, the hearing was resumed.

ORDERED that this suit be submitted on briefs to be filed in case No. 17,692. [673]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Wednesday, the 23d day of September, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT — SEPTEMBER 23, 1925 — ORDER THAT DECREE BE ENTERED IN FAVOR OF LIBELANT.

Pursuant to opinion filed case No. 17,693, ordered that a decree enter in favor of libelant. [674]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

STIPULATION AS TO AMOUNT OF RECOVERY.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled cause that in the event of any recovery by libelant herein against respondent herein, the amount of such recovery shall be the sum of Four thousand Eighty-three and Fifty-four Hundredths (4,083.54) Dollars, plus such interest and costs as the Court may allow.

Dated July 25, 1925.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.
IRA S. LILLICK,
Proctor for Respondent.

[Endorsed]: Filed Jul. 27, 1925. [675]

In the Southern Division of the United States District Court for the Northern District of California, Third Division.

IN ADMIRALTY.—No. 18,046.

S. L. JONES & CO. (a Corporation),
Libelant,

vs.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),
Respondent.

FINAL DECREE.

The above-entitled cause came on regularly for hearing December 29, 30 and 31, 1924, and January 2, 6 and 7, 1925, before Honorable Frank H. Kerrigan, United States District Judge. Libelant appeared by J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, its proctors, and respondent appeared by Ira S. Lillick, Esq., and Chalmers G. Graham, Esq., its proctors.

Evidence oral and documentary was introduced, briefs were filed and the cause was submitted to the Court for decision. The Court being fully advised in the premises filed its decision and opinion herein, holding and deciding that libelant should recover from respondent the sum of Four Thousand Eighty-three and Fifty-four Hundredths (4,083.54) Dollars, together with interest at the

rate of seven (7) per cent per annum thereon from February 15, 1920, which said interest to date hereof amounts to the sum of [676] One Thousand Six Hundred and Two and 30/100 (1,602.30) Dollars, and costs.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the libelant above named, S. L. Jones & Co. (a corporation), do have and recover from respondent, United States Shipping Board Emergency Fleet Corporation (a corporation), the sum of Five Thousand Six Hundred Eighty-five and 84/100 (5,685.84) Dollars, together with interest thereon at the rate of seven (7) per cent per annum from the date of this decree until paid, together with the costs to be hereafter taxed.

Dated this 24th day of September, 1925.

FRANK H. KERRIGAN,
United States District Judge.

Approved as to form, and five (5) days' lodging with the Court waived.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Entered in Vol. 19, Judg. and Decrees, at page 296.

[Endorsed]: Filed Sep. 24, 1925. [677]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

MOTION TO MODIFY FINAL DECREE.

Now comes the United States Shipping Board Emergency Fleet Corporation, a corporation, respondent in the above-entitled matter, appearing by its proctors, Ira S. Lillick and Chalmers G. Graham, and makes this its motion to modify, in the manner hereinafter set forth, the final decree in the above matter entered and filed the 24th day of September, 1925.

Said respondent moves that said decree, now providing for interest at the rate of 7% per annum, be modified and changed to provide for interest at the rate of 4% per annum.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

To S. L. Jones & Co. and to J. M. Mannon, Jr., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors:

You and each of you will please take notice that the above-entitled motion will be called for hearing on Saturday, the 24th day of October, 1925, or as soon thereafter as proctors [678] for the respondent may be heard, in the courtroom of the above-entitled court, Post Office Building, Seventh and Mission Streets, in the City and County of San Francisco, State of California.

Dated this 23d day of October, 1925.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Receipt of a copy of the within motion and notice is hereby admitted this 23 day of Oct. 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,
Proctors for Libelant.

[Endorsed]: Filed Oct. 23, 1925. [679]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand nine hundred and twenty-five. Present: The Honorable FRANK H. KERRIGAN, Judge, et al.

[Title of Cause.]

No. 18,046.

MINUTES OF COURT—OCTOBER 26, 1925—ORDER DENYING MOTION TO MODIFY FINAL DECREE.

The motion to modify the decree herein, heretofore heard and submitted, being now fully considered, IT IS ORDERED that said motion be and same is hereby denied. [680]

[Title of Court and Cause.]

IN ADMIRALTY.—No. 18,046.

NOTICE OF APPEAL.

To S. L. Jones & Company, a Corporation, Libelant in the Above-entitled Cause, and to J. M. Mannon, Jr., Esq., Farnham P. Griffiths, Esq., and Messrs. McCutchen, Olney, Mannon & Greene, Its Proctors, and to W. B. Maling, Clerk of the United States District Court for the Southern Division of the Northern District of California, Third Division:

You, and each of you, will please take notice, that the United States Shipping Board Emergency Fleet Corporation, respondent in the above-entitled cause, does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District Court of the United States for the Southern Division of the Northern District of California, Third Division, in Admiralty, entered in said cause on the 24th day of September, 1925, ordering, adjudging and decreeing that libelant, S. L. Jones & Company, a Corporation, recover the amount sued for by reason of the matters alleged in the libel in said cause with interest and costs and finding the amount due to said libelant to be the sum of $5,685.84, with costs, and interest thereon from the date of said decree.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent.

Dated: San Francisco, California, the 9th day of November, 1925. [681]

Due service and receipt of a copy of the within notice of appeal is hereby admitted this 13th day of November, 1925.

McCUTCHEN, OLNEY, MANNON & GREENE,

Proctors for Libelant.

[Endorsed]: Filed Nov. 13, 1925. [682]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

ASSIGNMENT OF ERRORS.

Comes now the United States Shipping Board Emergency Fleet Corporation, a corporation respondent and appellant in the above-entitled cause (hereinafter termed "Fleet Corporation") and assigns error in the conclusions, findings, proceedings and decree of the District Court, as follows:

I.

That the District Court erred in ordering and entering a decree in favor of S. L. Jones & Company, a corporation, libelant and appellee above named against the Fleet Corporation, respondent and appellant above named, for the recovery from said respondent and appellant of the principal sum of $4,083.54, together with interest thereon at the rate of 7% per annum from the 15th day of February, 1920, to the 24th day of September, 1925, in

the further sum of $1,602.30, together with interest and costs thereon.

II.

That the District Court erred in not dismissing the libel of S. L. Jones & Company against the Fleet Corporation. [683]

III.

That the District Court erred in holding that the law has attached a fixed and certain meaning to the following liberty to call clause

> "Received in apparent good order and condition at San Francisco * * * to be transported by the ship 'West Aleta' * * * *with leave * * * to touch at any port or ports in any rotation or order, in, or out of, the customary route, and to call at any port or ports more than once unto the port* of Cardiff (Rotterdam) * * * ."

IV.

That the District Court erred in holding that under such a clause the vessel did not have the liberty to proceed beyond the port of discharge named in the bill of lading and that the vessel under such a clause is limited in the application of the clause "to ports substantially on the course of the voyage described between its termini and before the port of destination."

V.

That the District Court erred in finding that the principal reason that the "West Aleta" took the course she followed on her voyage was convenience of the vessel in loading return cargo.

VI.

That the District Court erred in holding that the only distinction between the facts in the above-entitled cause and that of Smith vs. U. S. S. B. E. F. C. (2 Fed. (2d) 390) is that in the present case the greater part of the cargo was destined for Cardiff whereas in that case all of the cargo was shipped to Rotterdam.

VII.

That the District Court erred in holding that the phrase in the bill of lading before the court in this case "out [684] of the customary route" did not extend the liberties otherwise given in the said bill of lading.

IX.

That the District Court erred in holding that the liberties clause herein relied upon must be construed with reference to a particular voyage named in a particular bill of lading which covers only a part of the cargo between the ports of departure and the ports of destination named in the said bill of lading.

X.

That the District Court erred in holding that the voyage described in the said bill of lading was a specific one and covered the shortest geographical distance between the ports of departure and the ports of destination named therein.

XI.

That the District Court erred in holding that the liberties clause herein relied upon had no application to any port or ports not naturally and usually ports of call on the voyage.

XII.

That the District Court erred in holding that in proceeding on the voyage in which the "West Aleta" was at the time of her loss the vessel was initiating a new voyage before an old voyage was completed.

XIII.

That the District Court erred in holding that the only question present was one of fact, namely: whether Hamburg is a port on the course of a voyage from San Francisco to Cardiff or Rotterdam.

XIV.

That the District Court erred in holding that the [685] custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XV.

That the District Court erred in holding that evidence of the custom was inadmissible, and in excluding the same from consideration.

XVI.

That the District Court erred in holding that the liberties clause is plain and unambiguous, and in holding that the words "out of the customary route" are plain and unambiguous.

XVII.

That the District Court erred in holding that knowledge of the libelant that the "West Aleta" was to proceed to Hamburg before Rotterdam and Cardiff was unimportant.

XVIII.

That the District Court erred in holding that

facts and circumstances extraneous to the bill of lading must be disregarded.

XIX.

That the District Court erred in holding that all evidence tending to indicate that the libelant knew or ought to have known of the course which was intended to be taken by the "West Aleta" must be excluded.

XX.

That the District Court erred in holding that evidence tending to prove knowledge on the part of a shipper that a particular ship will deviate from a route is inadmissible, and in excluding the same from consideration.

XXI.

That the District Court erred in holding that the [686] "West Aleta" deviated in proceeding to Hamburg before she had discharged her Cardiff and Rotterdam cargo.

XXII.

That the District Court erred in holding that the "West Aleta" in so proceeding to Hamburg before discharging her Cardiff and Rotterdam cargo, under the circumstances of this case, made the respondent and the appellant an insurer of the said cargo.

XXIII.

That the District Court erred in holding that the Fleet Corporation was not entitled to the benefit of the insurance paid to S. L. Jones & Company.

XXIV.

That the District Court erred in holding that

the custom for vessels in the service in which the "West Aleta" was engaged to call at ports of discharge in any order was not established.

XXV.

That the District Court erred in holding that a deviation avoids the contract of carriage.

XXVI.

That the District Court erred in holding that it was not a condition *preceding* to suit for loss against a carrier for deviation that the cargo owner had been deprived of its right against its insurer.

XXVII.

That the District Court erred in not holding that the Fleet Corporation was only suable in admiralty under the provisions of the "Suits in Admiralty Act of 1920."

XXVIII.

That the District Court erred in not holding that the suit of S. L. Jones & Company was barred under the [687] provisions of Section 5 of the Suits in Admiralty Act of 1920.

XXIX.

That the District Court erred in not holding that the suit of S. L. Jones & Company was barred by laches.

XXX.

That the District Court erred in holding that the "West Aleta" was a vessel operated by the Fleet Corporation.

XXXI.

That the District Court erred in awarding the

libelant S. L. Jones & Company interest at the rate of 7% per annum.

XXXII.

That the District Court erred after holding that the libelant was entitled to interest, in not awarding the libelant interest at the rate of 4% per annum as provided in Section 3 of the Suits in Admiralty Act of 1920.

XXXIII.

That the District Court erred in not holding that the burden was on the libelant of proving what was the "customary route."

XXXIV.

That the District Court erred in not holding that the burden was on the libelant of proving that the "West Aleta" departed from the "customary route," and in so doing exceeded the privileges given in the liberties clause when she proceeded toward Hamburg as her first port of call.

XXXV.

That the District Court erred in not holding that the libelant herein had failed to prove that the "West Aleta" departed from the customary route. [688]

XXXVI.

That the District Court erred in not holding that under the terms and provisions of Section 3 of the Harter Act the Fleet Corporation was not an insurer.

XXXVII.

That the District Court erred in not holding that the owner having exercised due diligence to

make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted from faults or errors in navigation or in the management of said vessel.

XXXVIII.

That the District Court erred in not holding that the owner having exercised due diligence to make the "West Aleta" in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor the Fleet Corporation became or were responsible for the damage or loss suffered by the libelant for the reason that said damage or loss resulted and arose from dangers of the sea and/or other navigable waters and/or acts of God.

IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Respondent and Appellant.

Due service and receipt of a copy of the within assignment of errors is hereby admitted this 23 day of December, 1925.

J. M. MANNON, Jr.,
FARNHAM P. GRIFFITHS,
EDWARD J. McCUTCHEN,
Proctors for Libelant. [689]

[Endorsed]: Filed Dec. 23, 1925. [690]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

STIPULATION EXTENDING TIME TO AND INCLUDING DECEMBER 15, 1925, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same hereby is, extended to and including the 15th day of December, 1925.

EDWARD J. McCUTCHEN.
J. M. MANNON, Jr.
FARNHAM P. GRIFFITHS.
IRA S. LILLICK.

It is so ordered.

A. F. ST. SURE,
United States District Judge.

[Endorsed]: Filed Nov. 18, 1925. [691]

[Title of Court and Cause.]

IN ADMIRALTY—No. 18,046.

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 4, 1926, TO FILE ASSIGNMENT OF ERRORS AND APOSTLES.

IT IS HEREBY STIPULATED by and between

the parties in the above-entitled cause that the time for the filing of the assignment of errors and apostles on appeal may be, and the same is, hereby extended to and including the 4th day of January, 1926.

McCUTCHEN, OLNEY, MANNON & GREENE.

IRA S. LILLICK.

It is so ordered.

_____,

United States District Judge.

[Endorsed]: Filed Dec. 23, 1925. [692]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO APOSTLES ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 692 pages, numbered from 1 to 692, inclusive, contain a full, true and correct transcript of the records and proceedings in the cases of Rosenberg Bros. & Co. vs. United States Shipping Board Emergency Fleet Corp., No. 17,692; California Wine Association, a Corp., vs. United States Shipping Board Emergency Fleet Corp., No. 17,693; and S. L. Jones & Company, a Corp., vs. United States Shipping Board Emergency Fleet Corp., No. 18,046, as the same now remain on file and of record in this office.

I further certify that the cost for preparing and certifying the foregoing apostles on appeal is the sum of One Hundred Seven Dollars and Fifty-five

Cents ($107.55) and that the same will be charged against the United States in my next quarterly account.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 31st day of December, A. D. 1925.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [693]

[Endorsed]: United States Circuit Court of Appeals for the Ninth Circuit. No. 4748. United States Shipping Board Emergency Fleet Corporation, a Corporation, Appellant, vs. Rosenberg Brothers & Company, a Corporation, Appellee. No. 4749. United States Shipping Board Emergency Fleet Corporation, a Corporation, Appellant, vs. California Wine Association, a Corporation, Appellee. No. 4750. United States Shipping Board Emergency Fleet Corporation, a Corporation, Appellant, vs. S. L. Jones & Company, a Corporation, Appellee. Apostles on Appeals. Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

Filed January 4, 1926.

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Apostles on Appeals. Filed January 15, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States

Circuit Court of Appeals

For the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

Upon Appeals from the Southern Division of the United States District Court for the Northern District of California, Third Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the eleventh day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER OF SUBMISSION.

ORDERED appeal in each of the above-entitled causes argued by Messrs. Ira S. Lillick and F. M. Boal, proctors for the appellant, and by Mr. J. M. Mannon, Jr., proctor for the appellee, and submitted to the Court for consideration and decision, with leave to respective proctors to file further briefs 10x10.

At a stated term, to wit, the October Term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the tenth day of May, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF DECREES.

By direction of the Honorable William B. Gilbert, William H. Hunt and Frank H. Rudkin, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court in the above-entitled causes be forthwith filed by the Clerk and that decrees be filed and recorded in the minutes of this court on each of the appeals in accordance with the opinion filed therein.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Before GILBERT, HUNT and RUDKIN, Circuit Judges.

HUNT, Circuit Judge:

These are appeals in admiralty from decrees against the Shipping Board Emergency Fleet Corporation in three cases, consolidated, instituted by the shippers and owners of cargoes lost on the steamship "West Aleta" of the European Pacific line, operated by the respondents under contract by

Williams, Dimond & Company, from ports on the Pacific Coast to ports in the United Kingdom and the continent of Europe. The suits were carried on as between the cargo insurers, who paid the losses in full, and the operators of the ship, who were fully covered by insurance against any damages that might have to be paid for deviation.

Libelants claimed for failure to deliver, caused by deviation from the voyage. Respondents answered that the loss was occasioned by stranding, error in navigation, peril of the sea, and that under the terms of the contract of carriage and the Harter Act (27 St. 445), they were not liable.

The goods were shipped in 1920 at San Francisco under separate bills of lading, some naming Cardiff, Wales, some naming Rotterdam, Holland, as the ports of destination. Taking the bill of lading in one of the cases as an exemplar, it sets forth receipt of the merchandise to be transported by the "West Aleta" to be carried on said vessel operated by or on account of the United States Shipping Board Emergency Fleet Corporation or the United States Shipping Board "with leave * * * to touch at any port or ports in any rotation or order in or out of the customary route, and to call at any port or ports more than once, unto the port of Cardiff, and there deliver in like apparent good order and condition at the vessel's tackles under order," etc. On the face of the bill of lading there was the following clause: "The vessel shall have liberty to deviate for the purpose of making trial trips and shall pay any reasonable increased cost of cargo

insurance, if any, incurred in consequence thereof." After a description of the goods there is the following clause: "It is mutually agreed that the ship shall have liberty * * * to deviate for the purpose of saving life or property," and in the conditions included on the reverse side of the bill of lading this clause: "Also, that if on account of weather, * * * war, or other disturbances * * * or any causes beyond the control of the carrier, it should be considered impracticable or unsafe in the opinion of the master to land the goods at the port to which they are destined, the master is to have the option of landing the goods at any other port which he may consider safe, or retain same on board until the vessel's return trip * * * ."

The ship left San Francisco in January, 1920, and on February 10th sighted Bishop Rocks, a part of the Scilly Islands which mark the entrance to Bristol Channel. She did not proceed directly to Cardiff, but, passing the entrance to the port, proceeded easterly through the Straits of Dover and on February 11th was abreast of the Hook of Holland at the entrance to the port of Rotterdam. The ship did not go to Rotterdam, but took a course for Hamburg, Germany. The master, apprehensive because of mines planted in the North Sea during the World War, changed his course on February 11th, and on the 12th, believing he was safely out of the mine fields, headed east for what he took to be Nordeney lightship. Immediately after the last change of course the ship struck a sand ridge which extended

from the westerly end of Terschelling Island, and soon broke in two.

For more than a month prior to the sailing of the ship the European Pacific line advertised the "West Aleta" for "Hamburg, Rotterdam and Cardiff" in "The Guide," a shipping paper of San Francisco. One insurance policy was issued to the California Wine Association, covering wine to Cardiff and wine and liquor to Rotterdam on the "West Aleta," " * * * via Panama Canal to Rotterdam and Cardiff." The policy had a clause, "Held covered at a premium to be arranged in case of deviation or change of voyage, or of any omission or error in the description of the interest, vessel or voyage."

Using the Cardiff receipt and bill of lading as comprehending the several cases, we have an original contract on a voyage from San Francisco, port of shipment, to Cardiff, port of destination, with leave to the ship to touch at any ports in any rotation or order, in or out of the customary route, and to call at any port or ports more than once.

An interpretation of the contract solely by legal import and construction of the words used is that the voyage was to Cardiff, with the privilege of going to other ports in or out of order between the termini, in prosecuting the real objects of the adventure intended by the parties. We cannot regard the language of the liberty-to-call clause, permitting the ship to call at any ports in any order in or out of the customary route, as extensive enough to embrace in the voyage to Cardiff permission to go 750 miles beyond Cardiff and to call at Hamburg and then

return to Cardiff. (Gawdner vs. Senhouse, 128 En. R. 7.) Established rules of construction of policies are that the right of liberty to call is to be availed of as subordinate to the principle that the port or ports which the assured may visit shall be only those which are properly in the course of the voyage described, and in pursuance of the general purposes of the adventure embraced within the termini named in the policies. (Glynn vs. Margetson, 1 Q. B. 337; 1893 L. R. 351.) The Supreme Court of Massachusetts in Seccomb et al. vs. Provincial Insurance Company, 92 Mass. 305, said: "The only safe rule of construction is that which confines the meaning of a clause in a voyage policy giving liberty to touch at different ports to a permission to visit those only which are within the scope of the voyage insured." The scope of the voyage may include ports not exactly in the ordinary track of the specific voyage, but not those far outside or beyond the ordinary track. (The Wells City, 57 Fed. 317; affirmed, 61 Fed. 857.) Bringing the principle to the immediate case, the ports to which the "West Aleta" could go were those which, in a business sense, would be passed in the usual course of the voyage from San Francisco to Cardiff. A few of the many well-considered cases are: Leduc vs. Ward, 20 Q. B. D. (1888); U. S. Shipping Board vs. Bunge & Bern, 41 T. L. R. 73; Davis vs. Garrett, 130 E. R. 1456; Ardan S. S. Co. vs. Theband, 35 Fed. 620. But nothing in the bill of lading justifies the view that a voyage to Hamburg was the adventure in con-

templation. (Smith vs. U. S. Shipping Board, etc., 2 F. (2) 390.)

There is strength too, in the reasoning of the Court in United States Shipping Board vs. Bunge and Bern, *supra,* that the general liberty to deviate for the purpose of saving life and property gives some indications pointing to the view that the parties meant to give to their language a limited sense. In emergent circumstances, to save life or property, the ship could deviate without any restriction. Having such a clause under examination, the English Court of Appeals, speaking by Lord Bankes in United States Shipping Board vs. Bunge & Bern, *supra,* said: "It appears to me that the clause itself contains indications which, in my opinion, point to the conclusion that the parties intentionally used the language they did in its limited conventional sense. A distinction is drawn between calling at a port for bunkering or supplies and deviating generally; the right to deviate without any restriction is conferred for the purpose of saving life or property. To obtain bunkers or supplies the liberty is confined to the right 'to call at any port or ports in any order.' There seems to me to be reason in this."

But, it is said that the usage and practice of the trade gave to the bill of lading of the "West Aleta" a meaning which allowed her to go to Hamburg, Rotterdam and Cardiff, for which she was held out as a common carrier, in the order in which traffic and cargo conditions dictated. Doubtless underwriters are presumed to have knowledge of what is usually done by a ship in such a voyage, and the

description of the voyage in the policy refers, of course, to the usual manner of making it. But the oral testimony in support of the contention that the usual and customary manner of performing a voyage from San Francisco to Cardiff was by going first to Hamburg and then to Rotterdam and then back to Cardiff, lacks precision and is not convincing. Out of twelve vessels in the European Pacific service, only two called at Hamburg; none went to Rotterdam. There was testimony that the ships of the European Pacific line recognized a "range of ports" which included Bordeaux on the South, and Hamburg on the North, and would include the east coast of Ireland, and the practical understanding of the liberty clause of the "West Aleta" was to go to any port in any order within the range. Whether oral testimony of the practical understanding was admissible may well be doubted (Aetna Ins. Co. vs. Sacramento Stockton S. S. Co., 273 Fed. 55; The Delaware, 81 U. S. 579; Arnold on Marine Insurance, sec. 56); but passing that point and treating such evidence as legally received in defining what was the customary route, it fell far short of establishing a usage which would countervail the general maritime practice with reference to which the policy was made, that the ship shall pursue a direct course between her two termini, with permission to call only at any port or ports in or interjacent to the customary route. (The Reeside, No. 11657, Fed. Cas.)

Our conclusion is that there was a deviation, the effect of which was to end the contract between the

shippers and the carrier, thus making the carrier responsible for the loss of the merchandise. (Pacific Coast vs. Yukon Ind. Trans. Co., 155 Fed. 29; The Sarnia, 278 Fed. 459.)

Inasmuch as the deviation displaced the contract, the provisions of the Harter Act of 1893 afford no protection from the consequences of the wrongful act. As giving some support to that opinion reference may be had to the concluding part of section 3 of that act, where the words limit the liability in cases of loss arising from saving or attempting to save life or property at sea "or from deviation in rendering such services." It is reasonable to say that where there has been a deviation for a purpose other than to save life or property, there is liability.

The damages were measurable by the market value of the goods at the destination to which the ship undertook to carry them. (St. Johns N. F. Ship Corp. vs. Companhia, 263 U. S. 119; U. S. S. Co. vs. Haskins, 181 Fed. 962.) No avoidance of the consequence of the act of deviation can be predicated upon the ground that the damages must be limited to such additional insurance premium as the shippers had to pay on account of the deviation. Respondent was insured against liability for deviation and the defense in this suit on behalf of respondent is by the insurer, successor to American Steamship Owners Mutual Protection and Indemnity Association. It is a fact that insurance was paid in full to libelants, but it is generally held that upon payment of the loss the insurer was subrogated to the rights of the insured. That doctrine

was sustained by this Court in Pacific Coast Steamship Co. vs. Bancroft Whitney Co., 94 Fed. 180, and Steamship Wellesley vs. Hooper & Co., 185 Fed. 733; The Citta Di Messina, 169 Fed. 472.

It is suggested by the appellant that the Fleet Corporation is not liable because it was only the agent for the carrier, the United States. In Sloan Shipyard Corporation vs. U. S. Shipping Board, 258 U. S. 549, it was held that the Fleet Corporation is answerable for its acts and may not be relieved upon the ground of agency. Justice Holmes there stated the general rule that a person within the jurisdiction always is amenable to the law, and continued: "Supposing the powers of the Fleet Corporation to have been given to a single man, we doubt if anyone would contend that the acts of Congress and the delegations of authority from the President left him any less liable than other grantees of the power of eminent domain to be called upon to defend himself in court. An instrumentality of government he might be, and for the greatest ends; but the agent, because he is agent, does not cease to be answerable for his acts." The present suit is not one against the United States, but against the Fleet Corporation, and if the act of the Fleet Corporation was unlawful even though a suit have been brought against the United States, nevertheless, those injured are not barred of a remedy against the agent that did the wrongful act. (In re Eastern Shore Shipbuilding Corporation, U. S. Shipping Board, etc., vs. Wood, 274 Fed. 893; Providence Engineering Corp. vs. Downey Ship-

building Corp., 294 Fed. 641; certiorari denied, 44 S. Ct. 334; The Panol, 1925 A. M. C. 1173; United States Shipbuilding Corp. etc., vs. Banque Russo Asiatique, 286 Fed. 918; Smith vs. U. S. Shipping Board, etc., 2 F. (2) 390.

We must also decide against the contention that if the Fleet Corporation is liable there was an exclusive remedy under the suits in admiralty act, March 9, 1920 (41 St. 525). In Blamburg Bros. vs. United States, 260 U. S. 452, it was held that under the suits in admiralty act, which provides that in view of the provisions for libel *in personam* no vessel owned by the United States shall be subject to seizure by judicial process in the United States, and that in a case where, if such vessel were privately owned a proceeding in admiralty could be maintained, a libel *in personam* may be brought against the United States, "no libel can be maintained against the United States while the vessel is not in a port of the United States or one of her possessions." (She Wan & Sons vs. United States, 266 U. S. 108.) The purpose of the suits in admiralty act as construed in the decisions referred to, is to substitute an action *in personam* for one *in rem*. In our case the ship, having been wrecked off the coast of a foreign country, and not having been in any port of the United States at the time the libelants brought these suits, and not having been at that time a merchant vessel, suits *in rem* could not have been brought under the suits in admiralty act. (The Cape Fear, 8 F. (2) 80; Atlantic Fruit Co. vs. United States, 8 F. (2) 81;

Markle vs. United States, 8 F. (2) 87; Mack Engineering Co. vs. United States, 291 Fed. 713.)

Appellants ask this Court to apply the rule of laches. If respondents relied upon that defense they should have pleaded accordingly. (Green Star S. S. Co. vs. Nan Yang Bros. Tobacco Co., 3 F. (2) 369.) However, it has been held in this circuit that a court of admiralty will, by analogy, follow the state statute of limitations. (Pacific Coast S. S. Co. vs. Bancroft Whitney, *supra;* Crasci vs. Standard Fisheries, 7 F. (2) 378; Benedict on Admiralty, sec. 554.) Engel vs. Davenport, —— U. S. ——, decided April 12, 1926, is not in conflict with our view.

The decrees are affirmed.

[Endorsed]: Opinion. Filed May 10, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 10, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the

appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 10, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

DECREE U. S. CIRCUIT COURT OF APPEALS.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, Third Division.

This cause came on to be heard on the transcript of the record from the Southern Division of the District Court of the United States for the Northern District of California, Third Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be.

and hereby is, affirmed, with costs in favor of the appellee and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellee recover against the appellant for its costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and Entered May 11, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),

Respondent and Appellant,

vs.

ROSENBERG BROTHERS & CO.,

Libelant and Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corporation),

Respondent and Appellant,

vs.

CALIFORNIA WINE ASSOCIATION (a Corporation),

Libelant and Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION (a Corration),

Respondent and Appellant,

vs.

S. L. JONES & COMPANY (a Corporation),

Libelant and Appellee.

APPELLANT'S PETITION FOR A REHEARING.

To the Honorable WILLIAM B. GILBERT, Presiding Judge, and the Associate Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the appellant, the United States Shipping Board Emergency Fleet Corporation, and prays that a rehearing be granted in this case for the reason that the Court decided liability on the theory of tort, a theory which was not advanced by the libelant-appellees either in the District Court or in this court, and one which the appellant has had no opportunity to answer.

This court said in the course of its opinion of May 10, 1926, page 8:

> "The present suit is not one against the United States but against the Fleet Corporation and if the act of the Fleet Corporation was unlawful even though a suit might have been brought against the United States, never-

theless, those injured are not barred of a remedy against the agent that did the wrongful act."

This theory was not at any time advanced by the libelant-appellees. The libels state in their preamble:

"in a cause of contract and deviation civil and maritime."

The libels proceed on the theory that the appellant is liable because the "West Aleta" did not perform her contracts of transportation. They state under Point I of their brief, page 19:

"The 'West Aleta' was bound by her bills of lading to follow the ordinary sea track to Cardiff and Rotterdam and the fixed and certain meaning of the deviation clause did not authorize passing those ports and going beyond."

and finally under Point V, page 163:

"The deviation displaced the contract and made the respondent an insurer of the cargo."

In answer to the appellant's argument on laches the appellees state on page 223 of their brief:

"In this state a period of four years is allowed for commencing suit on written contracts. (C. C. P. Sec. 337.)"

The period of limitations under the California statute for torts for injuries to property is three years (per citation).

The decision of the District Court was based on contract principles and not on principles of tort liability and the District Court at no time consid-

ered the question of tort liability. It is stated (Record 686) in discussing the question of laches:

> "The final contention that laches are imputable to libelants is without merit, for the reason that these suits were brought well within the 4-year period of limitations prescribed by the California statute."

The Court was referring, of course, to the statute relating to suits on written contracts. Its reasoning on laches would no otherwise have disposed of the claim of S. L. Jones & Company on laches because that libel was filed on November 19, 1923 (Record 787), more than three years after the loss of the goods in question. The damages awarded by the District Court were on contract principles and not on tort principles.

This Court impliedly finds in its opinion an unlawful act on the part of the appellant. There is nothing in the record to support such a finding. This the appellant has had no opportuntiy of calling to the Court's attention. The only act that could be called unlawful or tortious in any sense is that of issuing sailing orders to the master of the "West Aleta." This was not done by the appellant or any of its officers. The sailing orders were issued by Williams, Dimond & Company, the managing operator appointed by the appellant for the owner, who thereby became the owner's agent.

Fred A. Hooper testified (Record 202):

> "Q. What was your position, or in what capacity did you serve with Williams, Dimond & Co. in 1919 and 1920?

A. As general freight agent, in charge of traffic."

and in cross-examination (Record 248) he testified:

"Q. And what, if anything, did you have to do with the routing *of the routing* of the vessels?

A. The routing of the vessels, the determining of the ports, and the manner in which they operated, was at my own discretion."

Mr. Mannon in his opening statement said (Record 191):

"First in regard to the sailing orders, the managers of the vessel, that is, Williams, Dimond & Co., who issued these sailing orders, required that she go to Hamburg first."

The appellant took no part in issuing those sailing orders.

Williams, Dimond & Company were the managing agents employed by the Fleet Corporation, the appellant, for the account of the owner of the "West Aleta," the United States. They thereby became agents not of the Fleet Corporation, the intermediate agent, but of the United States, the principal. The torts of a sub-agent employed by an intermediate agent whose employment is authorized by his principal are not the torts of the intermediate agent.

It is stated in the opinion that laches was not pleaded. The answer (Record 45, 47) sets up as a separate defense the provisions in clause 10 of the bill of lading placing a limitation on the time for giving notice of claim and for suing. This is

sufficiently broad to cover the defense of laches. It was so considered by the District Court which disposed of the question of laches on its merits and did not suggest that it had not been properly pleaded. No objection on this score was made by the libelants in the District Court. That the answer is sufficiently broad to cover laches seems clear from the decision of the Circuit Court of Appeals for the Second Circuit in the General Gorgas, 1926 A. M. C. 823, decided on May 3, 1926.* This case also applied the analogy of Federal and not State statute in determining laches.

Wherefore, the appellant prays that it be granted a rehearing in order that it may have an opportunity to properly present to this Court an argument showing that on the facts in the record and on the law as applied to those facts there is no liability on the part of the appellant.

Dated, San Francisco, June 8, 1926.

Respectfully submitted,
IRA S. LILLICK,
CHALMERS G. GRAHAM,
Proctors for Appellant and Petitioner.
A. M. BOAL,
F. R. CONWAY,
O. P. M. BROWN,
H. F. BIRNBAUM,
Of Counsel.

---

*Certified copy filed with clerk of court with this petition.

CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for appellant and petitioner in the above-entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition for a rehearing is not interposed for delay.

Dated, San Francisco, June 8, 1926.

IRA S. LILLICK,
Of Counsel for Appellant and Petitioner.

[Endorsed]: Printed Appellant's Petition for a Rehearing. Filed June 9, 1926. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the fourteenth day of June, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER DENYING PETITION FOR A REHEARING.

Upon consideration thereof, and by direction of the Honorable William B. Gilbert, William H. Hunt, and Frank H. Rudkin, Circuit Judges, before whom the causes were heard, IT IS ORDERED that the petition, filed June 8, 1926, on behalf of appellant in each of above causes for a rehearing of the above-entitled causes be, and hereby is denied.

At a stated term, to wit, the October term, A. D. 1925, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the fifteenth day of March, in the year of our Lord one thousand nine hundred and twenty-six. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

ORDER STAYING ISSUANCE OF MANDATES.

Upon oral application of Mr. Chalmers G. Graham, proctor for the appellant in each of above causes, and good cause therefor appearing, ORDERED issuance of mandate of this Court under Rule 32 in each of the above-entitled causes stayed for a period of sixty (60) days from and after June 19, 1926.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 4748.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

ROSENBERG BROTHERS & COMPANY,

Appellee.

No. 4749.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

CALIFORNIA WINE ASSOCIATION, a Corporation,

Appellee.

No. 4750.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION, a Corporation,

Appellant,

vs.

S. L. JONES & COMPANY, a Corporation,

Appellee.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two volumes, consisting of eight hundred and sixty-nine (869) pages, numbered from and including 1 to and including 869, and Book of Exhibits, consisting of one hundred forty-two (142) pages, numbered from and including 1 to and including 142, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled cases in the said Circuit Court of Appeals, made pursuant to request of proctor for the appellant and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 13th day of July, A. D. 1926.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

872 Supreme Court of the United States

No. 119

Order allowing certiorari
Filed November 23, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further orderd that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

64946—27——2